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## Human Rights and Wrongs: The United States and the I.L.O.—A Modern Morality Play

by Bruce L. Rockwood

"... and what doth the Lord require of thee, but to do justly, . . ." (Micah 6:8)<sup>1</sup>

ON NOVEMBER 1, 1977, President Jimmy Carter issued a statement terminating United States membership in the International Labour Organization (ILO).<sup>2</sup> This action culminated a series of steps undertaken by the United States since 1970 which have demonstrated American displeasure with the organization,<sup>3</sup> a displeasure cogently detailed in the letter of intent to withdraw sent by then Secretary of State Henry Kissinger to Francis Blanchard, Director General of the ILO, on November 5, 1975:

This letter constitutes notice of the intention of the United States to withdraw from the International Labour Organization. It is transmitted pursuant to article 1, paragraph 5 of the Constitution of the organization. . . . Rather than express regret at this action, I would prefer to express confidence in what will be its ultimate outcome.

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<sup>1</sup> *Micah* 6:8 (King James), quoted in President Carter's Inaugural Address, Jan. 20, 1977, 13 WEEKLY COMP. OF PRES. DOC. 87 (Jan. 22, 1977). See also the sentiments expressed in The President's Remarks to People of Other Nations on Assuming Office, 13 WEEKLY COMP. OF PRES. DOC. 89 (Jan. 22, 1977).

<sup>2</sup> 13 WEEKLY COMP. OF PRES. DOC. 1705-06 (Nov. 7, 1977).

<sup>3</sup> Schwebel, *The United States Assaults the I.L.O.*, 65 AM. J. INT'L L. 136 (1971); Interview with Harvey Batton, ILO Librarian, United Nations Bldg. (Dec. 22, 1977). United States displeasure concerns the business and labor components of the U.S. delegation. The ILO is little known in the United States, with no strong lobbying behind it for the ironic reason that American labor standards are already more advanced than those which the ILO seeks to promote for the world as a whole. Thus, the ILO can do little for American labor, while its more extremist members and their political activities can easily antagonize the American private sector.

The United States does not desire to leave the ILO. . . . But we do intend to make every possible effort to promote the conditions which will facilitate our continued participation. If this should prove impossible, we are in fact prepared to depart.

. . . I should like to present four matters of fundamental concern:

1. The erosion of Tripartite Representation.
2. Selective concern for Human Rights.
3. Disregard of Due Process.
4. The Increasing Politicization of the Organization.<sup>4</sup>

In the intervening two years the ILO attempted to adapt itself in several areas to meet American criticism. Reform efforts received considerable support from Western European delegations.<sup>5</sup> Despite arguments that the Americans merely misperceived the role of the ILO in the current international legal order,<sup>6</sup> the climate of hostility to the ILO remains strong in some key American business and labor circles.

When President Carter took office, he inherited this condition along with the entire burden of government, and it is therefore not surprising that Secretary of Labor Ray Marshall should admit in retrospect:

Of course when the Carter administration came in, we examined that letter and the efforts that were being made to try to change those conditions and what we concluded was that the conditions outlined in the letter were reasonable and that we ought to try to get those changes. And therefore, we affirmed the Kissinger letter.<sup>7</sup>

Thus, in February 1977, the State Department again warned that the ultimate decision whether to withdraw would depend upon changes within the ILO to satisfy the United States government, and American business and labor.<sup>8</sup>

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<sup>4</sup> 14 INT'L LEGAL MATERIALS 1582 (1975), excerpted at BN 2-4 (ILO Doc. 1977) [hereinafter cited as Kissinger]. For a preliminary evaluation of this letter, see Note, 17 HARV. INT'L L.J. 623 (1976).

<sup>5</sup> Briefing by F. Ray Marshall, Secretary of Labor, in Washington, D.C., Nov. 1, 1977 [hereinafter cited as Marshall]; Letter from Leo Tindmans, President of the Council of the European Communities, Brussels (Sept. 9, 1977), 13 WEEKLY COMP. OF PRES. DOC. 1388-89 (Sept. 21, 1977), urging the United States to work within the ILO for reform.

<sup>6</sup> Margaret Stewart discusses the non-political issues of the ILO in *BRITAIN AND THE ILO: THE STORY OF 50 YEARS* (1969).

<sup>7</sup> Marshall, *supra* note 5, at 3.

<sup>8</sup> 75 DEP'T STATE BULL. 197 (1977). See STAFF OF SENATE COMM. ON GOV'T OPERATIONS, 95th Cong., 1st Sess., REPORT ON U.S. PARTICIPATION IN INT'L

When the June 1977 International Labour Conference<sup>9</sup> failed to adopt American proposals to "depoliticize" debate in that forum and to restore due process to the enforcement of ILO human rights standards,<sup>10</sup> the issue became oversimplified in some circles as one of credibility; that is, whether the United States should proceed with the withdrawal in order to maintain its credibility in the ILO and in other international bodies.<sup>11</sup> Secretary Marshall, however, emphasized that this action was not a precedent for United States policy towards other United Nations agencies. Quite the contrary:

[Far] from weakening our commitment to other organizations, [withdrawal] probably strengthens our commitment to those organizations . . . partly because people will assume that it would weaken it. Therefore, we will direct our efforts to trying to reassure people that we will not.<sup>12</sup>

The promise to withdraw if changes were not made in the ILO appears to have been as much a promise to the AFL/CIO as it was to the ILO. It was arguably made, and finally executed, to satisfy domestic

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ORGANIZATIONS (Comm. Print 1977). "At the time actions in international organizations by a majority of member countries have made the organizations increasingly controversial. For example, the International Labour Organization . . . and [UNESCO] have been seriously hurt by political actions taken in these organizations." *Id.* at ix. "We must be firm, however, in our opposition to the wrongful use of such organizations to promote political or ideological causes. Where U.S. efforts encounter only abuse, we should withdraw from the organization." *Id.* at xi.

<sup>9</sup> The International Labour Conference is the Governing Body of the ILO, in the tradition of international labor organizations that the conference should set policy and serve as the governing agency. Interview with Professor Richard Meininger, Department of Economics, Ohio Northern University, in Ada, Ohio (Jan. 31, 1978). See Articles 2-6, & 19 of the ILO Constitution, and compare the issue of whether the Conference can, or should, be able to override the Governing Body on matters such as its agenda, despite U.S. concerns with due process; articles 14 & 16(3); and the conference debate on the issue of structure. Instrument for the Amendment of the Constitution of the International Labour Organization, Oct. 9, 1946, 62 Stat. 3485, T.I.A.S. No. 5401, 466 U.N.T.S. 323 [subsequent citations will be to the 1946 ILO Constitution, as amended].

<sup>10</sup> Marshall, *supra* note 5, at 4. Letter from Tadd Linsenmayer, Program and Policy Coordinator for ILO Affairs, U.S. Department of Labor, to Professor B. Rockwood, Ohio Northern University (Dec. 19, 1977). The 1977 Delegation Report is not yet available. See also Kissinger, *supra* note 4, at 1583-84.

<sup>11</sup> *The ILO—and Goodbye*, Manchester Guardian Weekly, Nov. 13, 1977, at 14, col. 4 (editorial).

<sup>12</sup> Marshall, *supra* note 5, at 2-3.

political observers rather than international considerations.<sup>13</sup> It is worth noting that the initial policy was begun by an administration whose attitude towards international bodies and human rights had been roundly attacked by President Carter during the recent Presidential election campaign. The argument within President Carter's own cabinet in favor of extending the deadline for withdrawal was rejected, not primarily for legal reasons,<sup>14</sup> but as a political sop to George Meany.<sup>15</sup>

As a result, the decision to withdraw was made and went into effect on November 6, 1977, cutting the ILO's annual budget by 25%<sup>16</sup> which necessitated significant cutbacks in the ILO's staff and programs.<sup>17</sup> [See Appendix I]

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<sup>13</sup> See, e.g., Moynihan, *End of a Dream*, Manchester Guardian Weekly, Nov. 20, 1977, at 15, col. 4; Schwebel, *supra* note 3; *Out of the ILO*, Manchester Guardian Weekly, Nov. 13, 1977, at 15, col. 4.

<sup>14</sup> Compare Article 1 of the ILO Constitution, which is silent on extensions, but permits nations such as the U.S. to rejoin merely by communicating their intent to rejoin, with the vague comments of Secretary Marshall, *supra* note 5, at 5.

<sup>15</sup> The problem is not reconciliation but the votes of the other ILO members. For there is little difference if we abandon the entity because of losing votes. See *News Conference by Mr. Cooper, June 3*, 76 DEPT STATE BULL. 648 (1977).

<sup>16</sup> Cf. U.N. Press Release, Office of Public Information, ILO/1989 (Nov. 2, 1977).

<sup>17</sup> Statement of the Director-General, ILO Circular No. 202 (Nov. 8, 1977): "The withdrawal of the major contributor to the budget of the Organization will, as you know, deprive us of 25 per cent of our revenue for the coming biennium, 1978-79; in other words, a total of \$42,300,000." The Director-General emphasizes the loss of the U.S. and its contribution will "weaken" ILO actions, but should not be an "irreversible blow." He called for an initial budget cut of 19.2%, or \$32,500,000, arguing that "other measures" could fill the gap between that amount and the 25% loss of funds due to U.S. withdrawal. Director-General Blanchard noted it would be "inconceivable" to cut out entirely any of the major ILO programs." Instead, staff cuts, postponed meetings, elimination of new recruitment, and reduction in bureaucratic apparatus seem to be his main emphasis. One area of contention is his statement that his cuts would retain the decentralized structure of the ILO's secretariat adopted in recent years. Decentralization puts more staff into the field in developing countries, thus spreading money and manpower around, but opens the ILO to charges of wastefulness, inefficiency, or being open to local influence. Part of the slack has already been made up by contributions, in amounts as yet unannounced, by the Philippines and Venezuela, above their assessed dues. ILO Press Release, *First Voluntary Contribution to ILO* (Nov. 8, 1977); ILO Press Release, *Philippines Pres. Marcos Pledges Additional Contribution to ILO Budget* (Nov. 30, 1977).

It is clear the ILO cannot rely on such voluntary extra payments permanently to makeup the deficit. See *Measures to Deal with the Financial Situation Resulting from*

The purpose of this paper is to analyze this action and its consequences for the international legal protection of human rights. What happened from 1975 to 1977 to cause the United States to take steps towards a United Nations agency which previously it never had taken with any comparable body, despite considerable provocation? What is the role of the ILO in the U.N. family of agencies, and how will American withdrawal affect that role? Can American departure from the ILO be reconciled with the Carter Administration's clearly enunciated, fundamental commitment to enhance global human rights, and the apparent desire of President Carter to take a forward, aggressive position in promoting broader understanding of the meaning of human rights?<sup>18</sup> Finally, what is the prospect for reconciliation with the ILO in the near future, and what steps should be taken now to promote such a reconciliation?<sup>19</sup>

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the Withdrawal of the United States, 12th Agenda item, Governing Body of the ILO, 204th Sess., 1977. External borrowing to make up the deficit was opposed at the session of the Governing Body, and a spokesman for the Group of 77 suggested that if full, 25% cuts were necessary, the balance should be struck fairly between "human rights programs" and "programs designed to promote social welfare." The Yugoslav Delegate, as a Group of 77 spokesman, felt the Director-General's initial 19.2% proposed reduction did not do this. "For example, programme 50 (International Labour Standards and Human Rights) would still reflect a net increase of 4.3% in the next biennium, despite the reductions proposed now, while programme 40 (Employment and Development) was to suffer a net decrease of 6.2%." *Third Report of the Programme, Financial and Administrative Committee*, 14th Agenda item, Governing Body of the ILO, 204th Sess., 1977. Mr. Plant, the United Kingdom worker delegate, supported a gradual transition to a full 25% cut. The employers' delegate suggested further consolidation and stated: "Many employer members knew from experience that slow-moving solutions to problems which called for staff cuts were far worse from the point of view of staff morale than immediate sharp reductions. . . ." Further cuts may come at the February 1978 meeting of the Governing Body. See Appendix I.

<sup>18</sup> The Group of 77 was founded at the 1965 United Nations Conference on Trade and Development when UNCTAD was created. Moynihan, *Abiotrophy in Turtle Bay: The UN in 1975*, 17 HARV. INT'L L.J. 465, 467 (1976). Membership numbered 112 in 1976. Those nations with whom we must deal either with reason or force, clearly outnumber us in many international bodies other than those with limited membership or weighted voting (e.g., bilateral bodies and the IMF). See Moynihan, *supra* note 13.

<sup>19</sup> The theory is that the ILO needs the U.S. more than the U.S. needs the ILO, but whether this is more than wishful thinking remains to be seen. Reconciliation with the ILO would seem not to be the real problem, since our problem is the conduct of other members. But it matters little if we abandon the entity because of losing votes. See Cooper, *Department Discusses Results of CIEC Meeting*, 77 DEP'T STATE BULL. 92 (1977).

The International Labour Organization was established in 1919 as a part of the Paris Peace Conference which ended World War I.<sup>20</sup> Samuel Gompers, President of the American Federation of Labour, was also President of the Commission on International Labour Legislation which drafted that part of the Versailles Treaty which became the first Constitution of the ILO.<sup>21</sup>

The authors of that Constitution sought to improve the conditions of labour everywhere. They did so not only for the sake of the human rights and welfare of workers, but also as an instrument for promoting the overriding goal of permanent peace.<sup>22</sup> Thus, the preamble to the first Constitution of the ILO states:

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice; . . . .<sup>23</sup>

The founders saw the human rights of workers as a necessary concern of the international system. The avoidance of further devastating wars was the touchstone which lent legitimacy to the enterprise.

After the second World War had begun, it was deemed necessary to revise the ILO Constitution and to reaffirm the commitment of its members to the furtherance of the rights of labour. The link between human rights and peace was reaffirmed in 1946 when the general conference of the ILO adopted the revised text of the Constitution:

Whereas universal and lasting peace can be established only if it is based upon social justice; And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; . . . .<sup>24</sup>

Previously, in 1944 at a meeting in Philadelphia, the 26th Session of the International Labour Conference had adopted a Declaration of Aims and Purposes of the ILO, known as the Declaration of Philadelphia. This document further served the organization as a declaration

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<sup>20</sup> See G. WEAVER, *THE ILO AND HUMAN RIGHTS* (ILO 1965); A. ALCOCK, *HISTORY OF THE INTERNATIONAL LABOUR ORGANIZATION* 1-36 (1971); G. JOHNSTON, *THE ILO: ITS WORK FOR SOCIAL AND ECONOMIC PROGRESS* (1978).

<sup>21</sup> BN 2-6 (ILO Doc. 1977); A. ALCOCK, *supra* note 20; Kissinger, *supra* note 4, at 1582.

<sup>22</sup> ILO Constitution, preamble.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

of rights, of intent, and of commitment by its members to take steps to achieve its goals in the aftermath of the second great war of the century.<sup>25</sup> The United States, which had joined the ILO in 1934,<sup>26</sup> supported this Declaration at that time, and again when it ratified the new Constitution in 1948.<sup>27</sup>

The Declaration made it clear that the promotion of the human rights of workers, in comprehensive social, economic, and political terms, was the legitimate goal of the ILO. States supporting the Declaration undertook to support the principle that the ILO could pursue its aims in consultation and coordination with other international organizations. Its primary purpose was to elaborate specific labor standards in the form of conventions or recommendations.<sup>28</sup> In 1945 the ILO became the first of the specialized agencies of the United Nations.<sup>29</sup>

The Declaration also stated, in broad language, that the ILO could consider other subjects which "bear upon" the concerns of labor. Such provisions would entail some overlap with other international institutions, and would risk offending the political sensibilities of some of its membership.<sup>30</sup>

<sup>25</sup> *Id.* at Annex to 1946 Constitution (The Declaration of Philadelphia) [hereinafter cited as Phil. Dec.].

<sup>26</sup> See Hudson, *The Membership of the United States in the ILO*, 28 AM. J. INT'L. L. 669 (1934).

<sup>27</sup> S.J. Res. 117, 80th Cong., 2d Sess. (1948). That the U.S. fully supported these principles at the time is clear from the language of the resolution:

[U.S. membership in the ILO] has proved of benefit to the people of the United States; and Whereas the ILO provides a unique international forum in which representatives of employers and workers join together with those of governments in formulating conventions and recommendations which serve as international minimum standards for labor and social legislation and administration within member countries; . . . and Whereas the constitution . . . of 1945 was adopted unanimously on October 9, 1946, with the entire delegation of the United States [in support] . . . .

<sup>28</sup> Phil. Dec., *supra* note 25, part II(e) & III.

<sup>29</sup> The ILO—The Fact Sheet for Americans, ILO, Wash., D.C. Office (1946).

<sup>30</sup> Alcock notes that the Constitution, as originally drafted, failed to explicitly give the ILO any economic powers, despite language which would make "intricate economic" matters clearly of concern to it. As a consequence, such efforts as the World Employment Program are largely a matter of exhortation to the members, and other U.N. agencies, to do more for various goals set by the ILO. Cf. W. LANDSKRON, ANNUAL REVIEW OF UNITED NATIONS AFFAIRS—1976, at 232-33 (ILO 1977). More could be done by explicitly lending labor and manpower expertise, and injecting employment considerations, in the inspection teams of the major lending agencies, such as the IMF



Thereafter, the ILO continued the work begun in the 1920's for the elaboration of an international labor code, creating universal standards in such areas as wages and hours, occupational health and safety, migrant labor, unemployment, health and social security benefits, freedom of association, and the abolition of forced labor.<sup>31</sup> The ILO concerned itself with vocational training of workers and with the training of manpower experts from various countries who would in turn establish vocational programs in their own countries.<sup>32</sup> It published voluminous literature on labor issues.<sup>33</sup> It provided a forum in which workers, employers, and government officials could meet to

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and the World Bank. Telephone interview with Leo A. Suslow, Director of Int'l Affairs Dep't, UAW (Jan. 16, 1978). Thus, while the ILO's enforcement and action program powers are limited, its mandate for discussion and the recommendation of member state conduct is broader than the "narrow sphere of labor legislation," as Alcock calls it. Compare ILO documents with the 1974 U.N. Charter of Economic Rights & Duties of State, and the U.S. reaction.

<sup>31</sup> As of January 1, 1977, the United States had still only ratified 7 of the 147 Conventions which had been adopted by the General Conference by June 1976. Chart of Ratifications of International Labour Conventions, ILO (1977). The rate of ratifications in 1977 by ILO member states was one of the highest recorded. Of the 148 ratifications of the various conventions, 30 were reconfirmations of new members for conventions previously adopted on their behalf by colonial powers, and 118 were new ratifications. (ILO Document, unpublished, 1978). This is the greatest number of new ratifications since the ILO's 50th anniversary in 1969. While it does not demonstrate that these nations are more advanced than the United States in actual labor practice, it does demonstrate the important role of the ILO in setting standards and goals, which permit workers in all countries to aspire to the level of working conditions, social security and human rights which workers in the western industrial states have acquired. The Conventions relating to human rights—trade unions, elimination of discrimination, and abolition of forced labor—received 32 ratifications in 1977, slightly more than 20% of the total. Despite this, the United States claims that such rights are not being furthered by the ILO. The role of the ILO in publicizing failures to adhere to ratified conventions is well known. T. Teklu, *The Origins and Function of the ILO*, (unpublished manuscript, Ohio Northern Univ., 1975). For an independent, critical evaluation of the effectiveness of the ILO Conventions and ILO supervision, see E. LANDY, *THE EFFECTIVENESS OF INTERNATIONAL SUPERVISION: THIRTY YEARS OF THE I.L.O. EXPERIENCE* (1966).

<sup>32</sup> *World Employment Report*, Int'l Labour Office, Background Paper No. 1 (1975). See Res. No. 19, *Commendation of the ILO's Promotion of Human Rights*, Washington Conference on Law and the World, Oct. 17, 1975 [hereinafter cited as Wash. Conference]; D. MORSE, *THE ORIGIN AND EVOLUTION OF THE ILO AND ITS ROLE IN THE WORLD COMMUNITY* (1969).

<sup>33</sup> For a complete listing of the ILO publications, see ILO Catalogue of Publications in Print (1977). The ILO's *International Labour Review* is its law journal. This may be reduced to a quarterly publication due to budget cuts.

discuss topics of mutual interest and to become acquainted on an informal basis.<sup>34</sup> It concerned itself with unemployment, assistance to unions in new nations, and problems of development generally.<sup>35</sup> The accomplishments of the ILO were widely recognized, and in 1969 it was awarded the Nobel Peace Prize for its humanitarian work.<sup>36</sup> In 1975 it was honored again by the Seventh World Conference on Law for its promotion of "a large body of international law relating to human rights," and for its mechanisms for the "effective implementation of these international labour standards."<sup>37</sup>

The ILO's machinery for supervising the ratification of its Conventions, and the implementation of its guidelines was one of the first to provide for the right of individuals to complain to an international agency.<sup>38</sup> Although limited in enforcement powers, the ILO's human rights machinery is the most elaborate in existence for an international body which strives to be universal in membership. It has been widely praised for this contribution to international law.<sup>39</sup>

Yet, despite its success, the ILO has been a continual source of controversy in the United States since the end of the Second World War. This is largely due to the readmission of the Soviet Union in 1954. A controversy arose over whether a Communist state, or any similar authoritarian state, could comply with the tripartite structure of the institution.<sup>40</sup> In particular, the United States representatives were vehemently opposed to the readmission of the Soviet Union, and

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<sup>34</sup> Article 3 of the Constitution provides for delegates, alternates, and advisors to attend the Convention for each tripartite delegation. The United States delegation in 1976 numbered 40 persons. ILO Constitution, art. 3; U.S. Delegation Report, 61st Sess., Int'l Labour Conference, 1976, at appendix I.

<sup>35</sup> The Declaration of Philadelphia compels this broad concern with workers' social, economic, civil, and human rights. The problem of resolving conflict between labor's rights to act as an autonomous force, and the goals of development in new states with limited democracy, is directly addressed by the ILO in its attempts to implement the liberal goals of its Constitution. G. CAIRE, FREEDOM OF ASSOCIATION AND ECONOMIC DEVELOPMENT (Int'l Labour Office 1977).

<sup>36</sup> *The I.L.O. on Trial*, N.Y. Times, June 16, 1976, at 36, col. 1.

<sup>37</sup> Wash. Conference, *supra* note 32. See F. Wolf, Work Paper on the ILO Experience in the Implementation of Human Rights, presented to the Seventh Conference of the Law of the World, Wash., D.C., Oct. 12-17, 1975.

<sup>38</sup> ILO Constitution, art. 19; Note, *supra* note 4; F. Wolf, *supra* note 37. Reply of the Director-General, Human Rights and the ILO, 52nd Sess., Int'l Labour Conference (1968).

<sup>39</sup> Wash. Conference, *supra* note 32.

<sup>40</sup> Note, *supra* note 4, at 625-26; Schwebel, *supra* note 3, at 141.

they pointed out the inconsistency of the Soviet Union's domestic regime with the conventions against forced labor and the ILO policy of favoring freedom of association.<sup>41</sup>

This concern flared up again in 1970 when the new Director General of the ILO, C. Wilfred Jenks, informed the American Deputy Undersecretary of State for International Affairs, George H. Hildebrand, that along with the appointment of a United States national to the senior directorate of the ILO, he also was going to appoint a Soviet national as Assistant Director General of the ILO.<sup>42</sup> The United States had supported Jenks in his election.

This information apparently caused an uproar in the United States delegation, leading to remarks by George Meany, head of the United States AFL/CIO, that this was "the last straw. . . . It is quite obvious that the [International Labour] office is, and has been for some time, in the Russians' corner."<sup>43</sup> The AFL/CIO selects the American labor delegate to the general conference.

The result of Meany's complaint, and of subsequent actions by Congressman John J. Rooney of New York City, was the illegal withholding of the American contribution to the ILO budget for the remaining half of 1970.<sup>44</sup> It was argued that the Soviets received different treatment than the United States in the ILO, raising complaints of a "double standard" in the institution which would appear comical in their naivete were they not familiar now in the light of the United States' withdrawal in 1977.<sup>45</sup>

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<sup>41</sup> Schwebel, *supra* note 3, at 141. The Soviet Union, Czechoslovakia, and Chile have all been closely scrutinized with respect to freedom of association and forced labor practices. U.S. Delegation Report, *supra* note 34, at 7-8. This did not change the adverse publicity attached to the political debate.

<sup>42</sup> Schwebel, *supra* note 3, at 136-37.

<sup>43</sup> *Id.* at 137.

<sup>44</sup> *Id.* at 137-39. Illegality of withholding dues was emphatically noted by the State Department in a letter to Congress. E. McDOWELL, DIGEST OF U.S. PRACTICE IN INTERNATIONAL LAW 221-31 (1976).

<sup>45</sup> Schwebel, *supra* note 3, at 141-42. It would seem to make more sense for the U.S. to publicly highlight the work of the ILO committees which expose Soviet violations and open Third World states to ridicule. Ambassador Moynihan's actions in the General Assembly could be copied in the ILO. ILO records demonstrate the paucity of U.S. ratifications, thus preventing the U.S. from charging the Soviet Union with failure to abide by the ILO Conventions. If détente compels us to refrain from attacking other violators of the ILO Conventions, why should the U.S. attack the ILO for selective actions? Selectivity and discrimination are not per se illegal or immoral concepts. The only real issue is their permissible basis and practical impact.

Eventually the United States paid its arrears and retained its vote in the ILO,<sup>46</sup> yet the causes of controversy did not subside. The commitment of the ILO to two goals—tripartite representation and universality in membership—continued to plague relations between the United States and the ILO throughout the 1970's. Tripartite representation meant that member states in the ILO were not represented solely by government bureaucrats, but rather by delegations of four persons, two representing the government of the day, and one each representing the interests of business and labor. The theory was that such delegations would be best suited for arriving at acceptable and enforceable labor standards.<sup>47</sup>

Universalism meant that the ILO sought the widest possible membership, not to be limited by requiring either prior membership in the League of Nations (later, in the United Nations), or strict compliance by member states with the full implications of its Constitution. From time to time states had withdrawn from the ILO and later rejoined.<sup>48</sup> However, never in practice has a state been excluded because it violated the rights of labor.<sup>49</sup> The withdrawal of South Africa in 1966 was due to pressures regarding human rights. In other situations the philosophy of membership seems to have assumed that the ILO could do more for workers if their states, however oppressive, were members.<sup>50</sup>

Together, tripartism and universalism have caused controversy. The member states are not represented solely by professional diplomats or government officials in ILO conferences and committees, but by representatives of the private sector as well. Universalism has meant

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<sup>46</sup> The U.S. lagged behind in its payments to the ILO for several years, but ultimately paid all back dues to fulfill a precondition for withdrawal as required by Article 1(4) of the ILO Constitution.

<sup>47</sup> G. WEAVER, *supra* note 20.

<sup>48</sup> BN-3 (ILO Doc. 1977).

<sup>49</sup> G. JOHNSTON, *supra* note 20; BN-9 (ILO Doc. 1977).

<sup>50</sup> Consider the decision to seat the workers' delegate from fascist Italy in the 1920's, despite his apparent lack of independence. A. ALCOCK, *supra* note 20, at 67-80; G. JOHNSTON, *supra* note 20, at 25-46, Note, *supra* note 4, at 625-27. From Italy to the Soviet Union, the ILO has accepted delegations whose credentials could be subject to challenge. The case of the PLO is different. Its agents were admitted as observers only at the indication of similar acceptance by the U.N. As a U.N. affiliate, the ILO should follow the spirit of the U.N. but the ILO did not take any action toward the expulsion of Israel. See ECONOMIST, *infra* note 51. The entire sequence of events may be subject to criticism, but there is no reason for the ILO to be singled out for attack under any rules of international law.

that many of the ILO's member states come from societies which for all practical purposes lack an independent private sector.

This is the context in which the events of 1975 to 1977 must be viewed. The ILO had existed for some time with United States membership and support. Much like many other international bodies, its membership and voting record reflected the changing membership of the community of nations following the decolonization of the 1950's and 1960's. In the 1970's, the situation was complicated by a new twist, the arrival on the international scene of the Palestine Liberation Organization (PLO). The PLO has sought to harass Israel and her western allies and to obtain recognition for itself.

The PLO previously had obtained observer status at the United Nations. In November 1974, PLO leader Yassir Arafat appeared, armed, before the General Assembly and denounced the West.<sup>51</sup> Other U.N. agencies granted the PLO observer status, and soon the issue of Palestine and the PLO became one of the standard sources of conflict in international organizations. A vote on a Palestinian-related issue in any international body generally would guarantee anti-Israeli, pro-PLO results. Communist forces invariably voted in tandem with the Arabs. Many developing states went along with the anti-Israeli position for several reasons: residual anti-Western colonialism, desire for Arab monetary support in the aftermath of the 1973 oil embargo, and fear.<sup>52</sup>

On June 9, 1975, the General Conference of the ILO, meeting in Geneva, voted to amend its rules to give the PLO the observer status it sought with the ILO.<sup>53</sup> The vote was 246 to 35, in favor of the PLO, with 66 abstentions.<sup>54</sup> When the observer delegation from the PLO was actually seated on June 12, 1975, the American trade union delega-

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<sup>51</sup> See *ECONOMIST*, Nov. 16, 1974, at 16-17; and Nov. 23, 1974, at 42-43.

<sup>52</sup> See *Zionism as Racism*, *ECONOMIST*, Oct. 25, 1975, at 54; Nov. 15, 1975, at 20; Nov. 22, 1975, at 65; Nov. 29, 1975, at 8. The PLO remains a factor in the Middle East, despite the recent initiative of Sadat. It is not clear whether the PLO issue will fade from the agenda of the ILO in time for the United States to rejoin on that basis. See Press Release GA/5686 (Nov. 25, 1977), and GA/5688 (Nov. 28, 1977), which address the Palestine issue. See also Vicker, *A Palestine State is the Minimum Condition for Peace*, *Wall St. J.*, Jan. 13, 1978, at 10, col. 6; President Carter's Statement at Aswan, Dep't of State Press Release, Jan. 4, 1978; and F. Kessler, *Mideast Chasm: Egypt/Israel Deadlock Shows the Deep Split Over Palestine Issue*, *Wall St. J.*, Jan. 25, 1978, at 1, col. 1.

<sup>53</sup> Informal Report, Comm. on the Int'l Labour Conference, 60th Sess. (1975); *N.Y. Times*, June 10, 1975, at 6, col. 5.

<sup>54</sup> Report, *supra* note 53.

tion, led by Irving Brown of the AFL/CIO, walked out of the conference in protest. Brown stated at the time that his group had "never opposed legitimate movements fighting for their freedom and independence," but that the AFL/CIO was opposed to the admission of a "liberation movement that did not represent an 'oppressed state' and whose goal was the 'destruction of another state.'" <sup>55</sup> The United States government and business delegates initially joined the labor group in protest, but later rejoined the proceedings of the conference. <sup>56</sup> The *New York Times* editorialized: "The American delegation walked out, calling the vote a tragic decision because the PLO was a political, not a labor entity under the ILO charter." <sup>57</sup> Thus, the recurrent cry was heard again; the ILO is "too politicized" in its behavior.

The United States walkout from the conference was denounced as "uninformed and irresponsible" by James Zogby, Vice President of Americans for Justice and Understanding in the Middle East. Mr. Zogby argued that despite the AFL/CIO's protestations, the PLO observer to the ILO did in fact represent the work force of the Palestinian people, and pointed out that "if every nation and organization followed such a course in international affairs, no international forums would exist." <sup>58</sup> In urging his own viewpoint that United States opposition to the PLO was delaying peace in the Middle East, Mr. Zogby clearly was making a political argument. But it was in response to a political act by the United States delegation concerning the long range institutional goals of the ILO which were bound to conflict with the short-run political concerns of the United States and her allies. <sup>59</sup> The Constitution of the ILO, and previous ILO practice, mandated concern for workers everywhere, with a view to enhancing peace. Just as the AFL/CIO views its duty in international fora to support Israel as a necessary condition of peace, it is not unreasonable to expect the ILO to wish to deal with the legitimate, labor-related issues of the Palestinian people in the interests of peace. Whether the AFL/CIO vision of the future, or that of the PLO, is likely to be implemented, is open to question. Whatever the eventual outcome, it seems strange for

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<sup>55</sup> N.Y. Times, June 13, 1975, at 9, col. 1.

<sup>56</sup> *Id.*

<sup>57</sup> *Gnawing at the U.N.*, N.Y. Times, June 21, at 1975, at 26, col. 2.

<sup>58</sup> Zogby, *World Labor: AFL/CIO v. PLO*, N.Y. Times, June 26, 1975, at 38, col. 3.

<sup>59</sup> *ECONOMIST*, *supra* note 52.

American labor to attack the ILO when it is used as a stage for the manifestation of political emotions which may overflow its normal competence, but which have little to do with its actual conduct as an institution.

The AFL/CIO walkout in 1975 set off a chain of events which illustrated once again the power of George Meany in international matters of importance for American labor.<sup>60</sup> Strongly anti-socialist and anti-communist, Meany perceived the ILO as having gone too far. He arranged for an intense lobbying campaign in Congress to induce a cut in the \$5.6 million payment due the ILO from the United States for the remainder of 1975, and to eliminate the entire 1976 payment.<sup>61</sup>

After further consultations with President Ford, Meany authorized his lobbyists to "unfreeze" the United States contribution to the ILO later in 1975, so that the Kissinger letter could be sent in compliance with Article I of the ILO Constitution. The United States would withdraw, and under the Constitution it could withdraw only if its arrears were paid in full.<sup>62</sup> At this time President Ford was seeking reelection, and hoped to win the support of American labor by agreeing with Meany on this issue.

Apart from the seating of the PLO observer at the conference, Meany and others in the United States were incensed with what they viewed as a concerted attempt by the Third World Nations (Group of 77) and the Communist Bloc Nations in the ILO to condemn Israel and selected right-wing governments for various human rights violations, while simultaneously blocking efforts to have violations of ILO conventions in their own societies examined and commented upon.<sup>63</sup> The techniques used in achieving these ends gave rise to the complaints of Secretary of State Kissinger concerning "selective concern for human rights" and "disregard of due process" in ILO activities as voiced in his November letter.

One example of this American view of a double standard for human rights was the 1974 annual conference's condemnation of Israel for racial discrimination against Arab workers living in the occupied territories. The decision was announced in spite of the failure of the appropriate committees of the ILO General Conference to find that Israel had violated any of the ILO's human rights conventions.<sup>64</sup> Other

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<sup>60</sup> *Trade Unions: Isolated*, ECONOMIST, Dec. 17, 1977, at 36, col. 3.

<sup>61</sup> *Id.*; *Secretary of State Meany*, N.Y. Times, Oct. 18, 1975, at 28, col. 2.

<sup>62</sup> ILO Constitution, art. 1.

<sup>63</sup> Note, *supra* note 4, at 623, 632; Kissinger, *supra* note 4.

<sup>64</sup> Note, *supra* note 4, at 130-31.

countries regularly attacked by the ILO have been Chile, South Africa, and the Portuguese colonies in Africa prior to their liberation.<sup>65</sup>

Kissinger's letter of intent pointed out the erosion of tripartite representation and recalled the battles over the seating of the Communist employer delegates in previous years. Tripartism raises the question of the true autonomy of worker and employer delegates from many of the developing and socialist nations now belonging to the ILO.<sup>66</sup> And while not expecting to reverse history, Secretary Kissinger seems to have suggested in his letter that the ILO nonetheless should defer to our interpretation in the cause of "a return to . . . basic principles and . . . a fuller achievement of its fundamental purposes."<sup>67</sup> The threat of withdrawal and the consequent denial of 25% of the annual budget of the ILO by the United States seem to be the relevant sanction implicit in the letter.<sup>68</sup>

In 1976, the United States saw little of the progress it had demanded as a condition to remaining in the ILO. Before the 61st Annual Conference opened on June 2, 1976, the Governing Body had decided that the limited time and resources of the meeting would be best used if the member states stuck to the agenda, and refrained from introducing additional resolutions. The Director-General specifically requested that the delegates not bring forth any new resolutions for conference consideration. Hoping to avoid renewed political disputes, the conference restricted the items to be considered to:

- 1) Program and budget proposals and other financial questions;
- 2) Information and reports on the application of ILO conventions and recommendations;
- 3) Establishment of tripartite machinery to promote the implementation of international labor standards;
- 4) Working environment;
- 5) Employment and conditions of work and life of nursing personnel;
- 6) Report of the Working Party on Structure.<sup>69</sup>

On May 18, the deadline for submitting resolutions for consideration by the conference, several East European worker delegates in-

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<sup>65</sup> U.S. Delegation Report, *supra* note 34, at 7-8; 31st ILO Report to the U.N. at 5-8 (1977).

<sup>66</sup> U.S. Delegation Report, *supra* note 34, at 7, 9; G. JOHNSTON, *supra* note 20.

<sup>67</sup> Kissinger, *supra* note 4.

<sup>68</sup> The long-term significance of the budget cut may be reduced by the supplementary U.S. contributions to the UNDP.

<sup>69</sup> U.S. Delegation Report, *supra* note 34, at 3.



troduced three resolutions. These resolutions were concerned with: 1) human rights and trade union freedom in Chile; 2) professionals and similar (salaried) workers; 3) the protection of human rights and trade union freedom in general.<sup>70</sup>

According to the United States delegation's report, all three of these resolutions included objectionable political aspects. In the resolution involving Chile, there was a violation of due process.<sup>71</sup> After strong American protest against submission of the resolutions, they were referred to the Governing Body for information.<sup>72</sup> The Communist delegate proposal led AFL/CIO Secretary-Treasurer Lane Kirkland to comment, "I expect the Communists to break their word; . . . I am not disappointed at what they did, because I expect the worst of them. The basic question, on which we await the answer, is how the countries that should be our friends perform at Geneva."<sup>73</sup>

The first major dispute of the 1976 Conference was the seating of the PLO delegation in the special World Employment Conference of 1976, which would take place after the annual, general conference. One week prior to the opening of the general conference, an amendment which would have permitted participation by the PLO was rejected by a margin of one vote in the Governing Body. Despite the Secretariat's opinion that the decision was not appealable, the Arab bloc sent the labor ministers of Egypt, Saudi Arabia, Tunisia, and Morocco to talk with newly-elected conference chairman Michael O'Leary of Ireland. The ministers demanded that the full conference vote on the right of the PLO to participate in the Employment Conference. The ultimate result, after a series of tense moments and additional calls for a vote on the matter, was the seating of the PLO.<sup>74</sup> There followed a challenge to the credentials of the worker delegate of Chile. Three international worker organizations charged that the Chilean labor delegate could not legitimately represent the interests of the workers of Chile because the government had suppressed the labor movement within the State. After United States claims that failure to

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<sup>70</sup> *Id.* at 5.

<sup>71</sup> Since Chile was already under investigation by the appropriate committees, the U.S. felt that full conference consideration of the issue at this time was out of order. *Id.* at 6.

<sup>72</sup> *Id.* at 5-6.

<sup>73</sup> N.Y. Times, May 28, at 3, col. 1.

<sup>74</sup> U.S. Delegation Report, *supra* note 34, at 6; *The ILO on Trial*, N.Y. Times, June 16, 1976, at 36, col. 1.

seat the delegate would result in a denial of due process, the vote favored Chile and the delegate was seated.<sup>75</sup>

There was bitter debate over what to do about multinational corporations. The World Employment Conference closed on June 17, seeking the adoption by the ILO of a program aimed at generating millions of new jobs, primarily in the developing countries, by the year 2000. The issue of the multinational corporations was not dealt with in the draft of the plan, largely because of the inability to reconcile several diametrically opposed approaches to the question. Many developing countries blamed the multinationals for worldwide economic imbalance, and sought limitations on their operations. The developed states argued that multinationals are an important source of expanded employment, especially in those countries which need increased employment the most. The final proposals adopted by the Conference were deemed satisfactory by the American delegates so that the 1976 Conference was not a total loss to the United States.<sup>76</sup> However, "depoliticization" and a return to "fundamental principles," on our terms remained unachieved.

When the 1977 annual conference opened on June 1, the United States was outwardly hopeful of achieving success in two key areas of concern. First, it sought to have repealed the three year old resolution which condemned Israel for "racial discrimination and violation of trade union rights" in the occupied Arab territories. Second, it sought a change in the standing orders of the Conference by which a body of independent experts would screen politically motivated resolutions unrelated to the organization's basic mission of safeguarding workers' rights. That proposal also was designed to prohibit the condemnation of ILO member states without a full advance hearing, and required validation of charges by an impartial commission.<sup>77</sup>

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<sup>75</sup> U.S. Delegation Report, *supra* note 34, at 6.

<sup>76</sup> N.Y. Times, June 17, 1976, at 49, col. 6; N.Y. Times, June 18, 1976, at 1, col. 1; N.Y. Times, June 19, 1976, at 27, col. 2.

<sup>77</sup> Raskin, *A Report on Worker Freedom and the Role of the U.S. in the ILO*, N.Y. Times, June 1, 1977, §4, at 5, col. 2; and N.Y. Times, June 2, 1977, at 10, col. 4. This issue pits our notion of procedural due process against the concept of freedom of speech, which is also central to our Constitution. The delegates to the General Conference believe that this freedom should apply to their deliberations. "Freedom of speech is the life-blood of the International Labour Organization." Report IX to the Int'l Labour Conference, 53rd Sess., at 178 (1969); 9th Agenda item, General Review of the Reports of the Working Party on the Programme and Structure of the I.L.O., (ILO 1969). Procedure within the ILO is intimately tied to the structure of the ILO,

Repeal failed, but the United States and Arab delegates reached a compromise by which Director-General Blanchard himself was to investigate the conditions of Arab workers in the occupied territories. That compromise was reached on June 9, 1977, but by the end of the session a fortnight later, the agreement was rejected by the full conference in a vote on the committee report.<sup>78</sup>

The change in the standing orders of the conference, again proposed by the United States [See Appendix II for the 1976 text of this proposal], continued to meet Soviet bloc and Third World opposition. These countries resisted what they viewed as American attempts to restrict the freedom of speech of the conference. In a countermove by the Third World "Group of 77" countries, it was proposed that the United States changes be linked to proposals to alter the process for amending the ILO Constitution, and replace non-elected seats on the Governing Body with elected seats which would give wider representation to developing countries. The Soviets pursued a variant of this pro-

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and the degree to which the powers of the various organs must be explicitly defined in the Constitution. One of the tentative proposals of the working party on the structure in 1975 was that "[t]he Conference should participate in the preparation of its agenda," even though the political consequences of this position, in American eyes, could be highly undesirable and wasteful of the limited time and manpower resources of the annual conference. Report IX of the Working Party on Structure to the Int'l Labour Conference, 60th Sess. (1975). As Ray Marshall stated: "[T]he main purpose of the ILO is to enforce labor standards . . . and too often the basic purpose was diverted by extraneous political matters that were injected into the procedures of the ILO." Marshall, *supra* note 5, at 2. How are free speech and procedural due process to be reconciled? The debate was resolved in 1977. See Report VIII of the Working Party on Structure to the Int'l Labour Conference, 61st Sess. (1976). Cf. Report of the Committee on Structure: Submission, Discussion and Adoption, and note the remarks of the United Kingdom delegate at 3, and the remarks of the U.S. government delegate at 5; i.e., "I intervene with great sadness . . . [T]he continued lack of an amendment to Article 17, which would set up criteria to insure that there could be no condemnation without due process, has been one of basic disruptive elements causing so many difficulties in this Conference . . . Let us not talk about new realities in the world as we destroy that set of institutions so painfully developed by the ILO over the years to provide due process." The American position, apparently, is that its proposal is non-negotiable. Thus it should not be a "bargaining counter with respect to other matters." *Id.* at 5. If the U.S. analysis of history is uniquely correct, its conclusion necessarily follows. Yet there remains a lingering doubt as to just who will be responsible if the ILO does fall into the hands of one camp in the global arena. The question stands that whether the U.S. government delegate who has represented the U.S. in this issue under President Ford, is the logical candidate to execute the policy of the Carter administration.

<sup>78</sup> N.Y. Times, June 21, 1977, at 16, col. 1.

posals, attempting to achieve geographically proportional representation within the workers and employers groups of the conference, in particular with respect to the selection of the representatives of these groups on the Governing Body. The Soviets claimed that without such changes, these two groups of the tripartite ILO system unfairly ignored the viewpoints of the communist social system's managerial and worker groups.<sup>79</sup>

The result of the strong debate within the Committee on Structure was a decision with the consent of the full conference to refer the entire matter to subsequent sessions of the Committee. The result avoided a showdown, but at the expense of precluding any possibility of a vote on the merits of the American proposal which might have kept the United States in the ILO. The American worker's delegate referred to the vote as "Black Monday."<sup>80</sup>

The response of the Carter Administration came from the voice of Labor Secretary Marshall, who warned the world on June 23, 1977, that the United States probably would quit the ILO now, despite attempts by the Director-General to persuade it to remain a member.<sup>81</sup>

Despite Marshall's statement, debate continued within the Carter Cabinet until the very end, as evidenced by U.N. Ambassador Andrew Young's comment in July 1977 that most of the cabinet favored continued participation in the ILO.<sup>82</sup> Such comments created a flurry of renewed opposition to the ILO in the press and media by those groups committed to withdrawal.<sup>83</sup>

The AFL/CIO, for years in charge of selecting the American worker's delegate to the ILO, remained adamantly in favor of withdrawal. When President Carter's statement of termination of membership was published, George Meany stated, "We support and endorse the decision of President Carter to stand by the notice of withdrawal by the U.S. from the ILO."<sup>84</sup> But other concerned labor groups in the United States felt otherwise. Arguably, given the declining membership

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<sup>79</sup> Raskin, *supra* note 77; Provisional Record, Int'l Labour Conference, 63rd Sess., at 35 (1977).

<sup>80</sup> Provisional Record, *supra* note 79. The 1977 U.S. Delegation Report is not yet available.

<sup>81</sup> *Deja Vu at the ILO*, Wall St. J., June 28, 1977, at 16, col. 1.

<sup>82</sup> N.Y. Times, July 5, 1977, at 14, col. 5.

<sup>83</sup> Wall St. J., *supra* note 81; *Failure of Nerve*, Wall St. J., Sept. 26, 1977, at 18, col. 1; *U.S. Reported Ready to Leave the ILO*, N.Y. Times, Nov. 1, 1977, at 1, col. 1.

<sup>84</sup> *U.S. Membership in ILO Ends*, AFL/CIO FREE TRADE UNION NEWS, Dec., 1977, at 6.

of AFL/CIO affiliated unions in recent years,<sup>85</sup> the voice of other labor groups and unorganized workers in the United States should play a greater role in decisions affecting American policy towards the only international body concerned with the rights of labor. For example, the United Auto Workers Union (UAW) shares the concern of all American unions with anti-American rhetoric in international bodies such as the ILO. But the UAW takes a broader view of the constructive role we can play, providing we remain active in such bodies. As early as August 3, 1977, UAW President, Douglas Fraser, urged President Carter to decide in favor of continued United States participation in the ILO:

I believe that the ILO has a significant role to play in the struggle of workers for human rights across the world. If the United States withdraws from the one international agency which has played such a central role in promoting human rights for workers, our hope of improving the lives of many will greatly diminish. . . . It is not clear to me that our goals can, in any way, be furthered by withdrawal [which] will provide those with whom we strongly disagree an unobstructed path down which they will carry their effort to expand their influence, particularly in developing countries.<sup>86</sup>

The American business community, represented by the United States Chamber of Commerce favored withdrawal. In a letter to the President dated October 6, 1977, Chamber President Richard L. Leshner expressed the view that the "ILO is not an effective mechanism through which to promote human rights. . . . [T]he ILO is incapable of implementing its constitution . . . [and] withdrawal could stimulate reforms in the ILO and other U.N. organizations."<sup>87</sup> Leshner listed six positive results to expect if President Carter ordered withdrawal:

- 1) Withdrawal would emphasize your Administration's strong support of human rights.
- 2) Withdrawal would indicate a firmness in international relations on the part of your Administration that would be welcomed by most Americans.

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<sup>85</sup> *ECONOMIST*, Dec. 17, 1977, at 36-37; U.S. DEPT OF LABOR, BUREAU OF LABOR STATISTICS, *HANDBOOK OF LABOR STATISTICS* (1977).

<sup>86</sup> *NEWS FROM UAW*, Aug. 3, 1977.

<sup>87</sup> *Wall St. J.*, *supra* note 81. See also letter from Richard L. Leshner, U.S. Chamber of Commerce President, to the President of the United States (Oct. 3, 1977). Interview with James F. Steiner, Director National Organization Liaison, United States Chamber of Commerce (Dec. 19, 1977).

- 3) Withdrawal could improve the ILO and other international organizations. (It would stimulate reforms.)
- 4) Remaining in the ILO would be a political liability. (That is, if the U.S. was to remain, its credibility would be seriously questioned, especially in light of the fact that the majority of involved U.S. entities favor withdrawal.)
- 5) The U.S. could not bring about reform in the ILO by participating for one more year.
- 6) There is little or no evidence that the ILO has been effective in improving living standards of workers of the United States or anywhere else.<sup>88</sup>

Numerous business groups believe that the ILO has not been effective in promoting Western ideas of labor-management relations. Charles Smith, Jr., the American employers' delegate to the ILO, advocated full United States withdrawal.<sup>89</sup>

On November 1, 1977, President Carter directed that United States membership in the ILO be terminated because the organization had failed to take corrective measures to restore its commitment to its original purpose. He left the door open, however, for an American return "whenever the ILO is again true to its proper principles and procedures."<sup>90</sup>

Secretary of Labor Ray Marshall also issued a statement on the United States withdrawal on November 1, 1977. He echoed the President, but promised affirmative action on the part of the Administration to monitor events in Geneva closely, with a view toward eventually rejoining the ILO.<sup>91</sup>

Marshall indicated United States withdrawal would not mean a total cutoff of American funds to the ILO. Although the United States no longer will be paying \$20 million dollars a year to the ILO, it will continue to contribute over \$100 million per year to the United Nations Development Program (UNDP). The UNDP distributes this money to other United Nations agencies. According to Marshall, some \$35 million in technical assistance funds is given to the ILO each year by the UNDP. Thus, the United States actually will be contributing indirectly to the activities of the ILO.<sup>92</sup>

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> PRES. DOC., *supra* note 2.

<sup>91</sup> Marshall, *supra* note 5.

<sup>92</sup> *Id.* The UNDP is presently the clearing house for all U.N. development aid. However, structural reform may soon improve its cost effectiveness and the supervision

Confirming this announcement, Ambassador Melissa Wells, United States Representative to the United Nations Economic and Social Council, announced in the 1977 Pledging Conference of the UNDP that "the United States contribution to the UNDP for the coming year will be \$115 million, or \$15 million more than in 1977." Noting arrearages and mounting contributions in nonconvertible currencies, Ms. Wells stated:

My government's bilateral development assistance strategy increasingly is being directed towards programs designed to help developing countries meet the basic human needs of their poor majorities. We note with pleasure that UNDP's efforts, in considerable measure, and increasingly, have a similar focus.<sup>93</sup>

The work of the UNDP is characterized by Ambassador Wells as supportive of the human rights objectives of the Carter Administration. Her terms can be shown to be identical to an appropriate characterization of the work of the ILO.<sup>94</sup> This being the case, one is forced to ask: What, despite the work of the ILO, can explain the United States withdrawal?

There are two answers, one political and one institutional. The political decision was to appease George Meany on a matter of importance to him, but with little domestic political salience. Second, the

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of its aid programs. This is one of the main objectives of the Carter administration in U.N. relations. Such reform of all U.N. agencies, including the ILO, is at the heart of the cost-cutting, extravagance-challenging criticisms of international bodies in the recent Ribicoff Committee Report, *U.S. Participation in International Organizations*, *supra* note 8. Perhaps one latent issue in the U.S. withdrawal is the ILO's inefficiency and the desire to demonstrate the limits of U.S. tolerance of the behavior of other member nations in the U.N. and its affiliates. If ILO budget-cutting results in marked improvements of ILO programming, the U.S. should consider rejoining the ILO. Such improvements may take a long time, and will become apparent only if the U.S. does not rejoin quickly for political reasons.

<sup>93</sup> Statement of Nov. 2, 1977, by Melissa Wells, U.S. Representative to the U.N. ECOSOC, U.S. Mission to the U.N., Press Release No. USUN-92 (1977).

<sup>94</sup> See *Developments in Major Programs*, 31st Report of the ILO to the U.N. (1977); G. WEAVER, *supra* note 20. Mr. Weaver was Assistant Secretary of Labor for International Affairs and a U.S. delegate to the ILO. He delivered these lectures to the Howard University School of Law in cooperation with American and George Washington Universities in April and May of 1965. See also FREEDOM OF ASSOCIATION—DIGEST OF DECISIONS OF THE FREEDOM OF ASSOCIATION COMMITTEE OF THE GOVERNING BODY OF THE ILO (ILO 1972); H. BARTOLOMEI DE LA CRUZ, PROTECTION AGAINST ANTI-UNION DISCRIMINATION (ILO 1976); Human Rights and the ILO, Reply of the Director-General, 52nd Sess. Int'l Labour Conf. (1968); F. Wolf, *supra* note 37.

only difference between the ILO and the U.N. with its affiliated agencies is the tripartite nature of ILO representation. Because the ILO strives to go beyond governments and to incorporate the private sector, the ILO is held to a higher standard of judgment by its Western member states.<sup>95</sup> Although United States business and labor delegates condemn the ILO for practicing a double standard in its relations with market and socialist economies, in reality the West is guilty of a double standard in abandoning the one international body which attempts to combine universalism with the integration of private sector interests into its program. To be consistent, either we should withdraw from all international fora in which American interests and views are similarly maligned or, preferably, we should recognize that the United Nations and its affiliates can be a platform for politics in many nations. Such political pronouncements are wholly irrelevant to the practical day to day work of such bodies, where the real labor for building peace goes on, and where we as a nation cannot afford to let our voice go unheard.<sup>96</sup>

## II.

With the withdrawal of the United States, and the apparent desire of China either to withdraw or at least to cease active participation,<sup>97</sup> the ILO has an active membership of 134 or 133. Its institutional structure, the cause of so much of its current woe, is thoroughly tripartite in nature, which has caused considerable difficulty in the past in its attempts to draft new labor standards.<sup>98</sup> The tripartite structure has led to considerable debate about the proper mode of selection of ILO delegates. The issue is whether they should be treated as representatives of their governments if they are nominally sent as workers' or employers' representatives.<sup>99</sup>

The thesis of this portion of the argument is that the ILO is a Janus-faced being. It purports to give greater scope to private sector interests than other international bodies, and to a large measure it has

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<sup>95</sup> See Marshall, *supra* note 5. Emphasis is placed on the uniqueness and singularity of the ILO in explaining why United States withdrawal is not of precedential effect.

<sup>96</sup> Cf. R. Smith, *ILO—A Vital Role to Play*, Manchester Guardian Weekly, Nov. 20, 1977, at 2, col. 1, (editorial).

<sup>97</sup> Wall St. J., Nov. 9, 1977, at 1, col. 3.

<sup>98</sup> Wilson, *The Preparation of International Labor Conventions*, 28 AM. J. INT'L L. 506 (1934).

<sup>99</sup> Hudson, *supra* note 26.



succeeded in doing so. But it is a realistic institution, drafted by statesmen who understood international fora and power politics. It therefore retains the state as its focus, and in effect gives each member state the option to determine for itself how far it will go in fully implementing what Kissinger terms the "fundamental principles" of the Constitution. In so doing, the ILO seeks to bridge the gap between organized and unorganized international society through transitional, discretionary procedures. Its greatest failure is that by emphasizing its own uniqueness, perhaps it has set for itself standards of excellence which could not be met and which provide its critics the opportunity to attack it.<sup>100</sup>

The three principal institutions of the ILO are identified in Article 2 of the Constitution:

The permanent organization shall consist of:

- (a) a General Conference of representatives of the Members;
- (b) a Governing Body composed as described in Article 7; and
- (c) an International Labour Office controlled by the Governing Body.<sup>101</sup>

The General Conference of the ILO serves as its legislative and political arm. It meets annually in Geneva in June to discuss proposed Conventions and Recommendations, receive reports and complaints, and debate policy.<sup>102</sup> Each Member State sends a four-man delegation, composed of two government delegates, one worker delegate, and one employer delegate, with alternates and advisors as necessary for specific agenda items.<sup>103</sup> These annual gatherings provide an opportunity for informal meeting as well, which may serve to build ties of understanding and cooperation without which no amount of formal debate can be fruitful.

The Governing Body serves as a permanent executive body, composed of 28 government representatives, 14 worker representatives, and 14 employer representatives. The worker and employer delegates are selected by their respective groups under the principle known in the ILO as "group autonomy," enshrined in Article 7(4) of the Constitu-

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<sup>100</sup> See, e.g., the extremely misguided editorial, *The ILO and Goodbye*, Manchester Guardian Weekly, Nov. 13, 1977, at 14, col. 4. See also Smith, *supra* note 96. Professor Smith's letter is in reply to the above mentioned criticisms.

<sup>101</sup> ILO Constitution, art. 3.

<sup>102</sup> G. JOHNSTON, *supra* note 20, at ch. IV; Bocksor, *The ILO*, 1973 PROC. AM. SOC'Y INT'L L. 87.

<sup>103</sup> ILO Constitution, art. 3.

tion. The government delegates are selected as set forth in Article 7(2): ten non-elective positions to represent the nations of "chief industrial importance" and the rest elected by and from among the remaining members. The nations of "chief industrial importance" thus have been singled out because they are likely to have the largest populations of industrial laborers, traditionally the primary concern of ILO standard-setting. Periodically they are selected by the Governing Body itself, under Article 7(3), thus giving the Constitution a slight structural weight in favor of advanced, industrial nations (which tend, in practice, to be the primary contributors to the ILO budget.)

One controversial aspect of these "nations of chief industrial importance" is found in Article 36 of the ILO Constitution. This provides that the Constitution cannot be amended unless approved by two-thirds of the votes cast at an annual conference, and then ratified by two-thirds of all members including five of the ten nations of chief industrial importance.<sup>104</sup> Thus, regardless of changes in overall membership, or in the political, economic, and social conditions of the member countries, six of the ten permanent members of the Governing Body can exercise a veto at least in theory, over constitutional amendments.

The third major arm of the ILO is the permanent secretariat, known as the International Labour Office. It is headed by a Director-General, currently Francis Blanchard of France, who is selected by the Governing Body. He supervises an international civil service of impartial administrators, technical experts and legal advisors. Based in Geneva, but with offices around the world, the International Labour Office staffs the annual conference, administers the ILO budget, and seeks to implement technical and vocational programs through expenditures of funds made available not only by the ILO budget, but also on a project basis from the United Nations Development Program.<sup>105</sup> As of January 1977 the ILO staff numbered 2,803 persons of 102 nationalities, who administered a budget of \$79.6 million in 1977, as well as an assessed two-year budget totalling \$169 million for the years 1978 and 1979.<sup>106</sup>

The major work of the General Conference is to draft Conventions and Recommendations, as is provided for in Article 19 of the Constitution. Both require a two-thirds majority of the votes cast by those pre-

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<sup>104</sup> See the debate in Provisional Record, *supra* note 79.

<sup>105</sup> See note 92 *supra*.

<sup>106</sup> BN 2-1, 2-2 (ILO Doc. 1977). See Appendix I.

sent and voting in order to be approved and be sent to the member states for ratification or implementation. Both have reporting requirements designed to provide that the duty to seek ratification, at least, is complied with in a reasonable time (Article 19(5)(b)), and that information on compliance with ratified conventions is forthcoming (Article 19(5)(d); Articles 20, 22, 23) for the benefit of the Conference.<sup>107</sup>

Of some interest in the United States is the "federal states" clause of Article 19(7), which permits federal governments to comply with their duties to the ILO by submitting Conventions to their states for action rather than seeking federal ratification, Article 19(7)(b). Since much labor and social legislation is traditionally deemed of state, or joint state-federal, concern in the United States, the United States has avoided the hardship of seeking ratification of ILO Conventions by sending them off to the states, where no action is ever taken, thus fulfilling its obligations in letter, if not in the spirit of the organization.<sup>108</sup>

Having ratified only seven of the ILO Conventions as of 1977, the United States has one of the worst records of any ILO member,<sup>109</sup> a fact recognized by Labor Secretary Marshall when he indicated:

Now, my own view is that we should have adopted more of them and that there are other federal systems that did, and if we had stayed in the ILO it was my intention to try to get more of those adopted in the United States.<sup>110</sup>

The United States, of course, has one of the highest standards of living in the world, and one of the best records for freedom of association, wages and hours, and conditions of labor, of any nation in the world in or out of the ILO. Its labor law and system of labor relations could be a model for other ILO members. Even though it has not ratified most ILO conventions, it probably is fair to say that its practices are in compliance with, or better than, ILO standards in almost every case.<sup>111</sup>

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<sup>107</sup> See ILO Report to the U.N., *supra* note 94, at 5-8.

<sup>108</sup> Note, *supra* note 4, at 636; Hudson, *supra* note 26.

<sup>109</sup> Chart of Ratifications, *supra* note 31.

<sup>110</sup> Marshall, *supra* note 5, at 4.

<sup>111</sup> *Hearings Before the Task Force on the ILO of the House Comm. on Education and Labor*, 90th Cong., 2d Sess. 113 (1968), reporting on the United States Delegation to the 51st session of the ILO, June 1967. It should be noted that such congressional reports are few and far between, despite the annual meeting of the labor

This being so, and given that there are "virtually no matters of any exigency, including human rights legislation, that Congress could not pass even in the absence of a treaty,"<sup>112</sup> it would make sense for the United States, if and when it rejoined the ILO, to consider wholesale ratification of most ILO Conventions. Indeed, this prospect should stand as a strong argument for rejoining the ILO at an early date, for a number of reasons. Primarily, by lending its weight to the numbers necessary to bring these Conventions into force, the United States would contribute to the building of international law in the area of the rights and standards of workers and working conditions. Secondly, this would give added moral and political leverage to the United States in and out of the ILO, in its pursuit of human rights. Thirdly, the United States would be in a position to take the lead in suggesting new areas for the articulation of universal labor standards.

The direct benefits to the United States, as well as to the international system, of such a move would be numerous. There would be enhancement of international human rights law through explicit American support for the standard setting work of the ILO. Also, it would provide the United States an opportunity for positive coalition building which could spill over into other international bodies. Finally, such development of international labor law would protect American business and labor interests, by aiding in the gradual improvement of world labor standards and associated labor costs. One cannot expect other nations to take sudden steps drastically to increase their labor costs unilaterally, especially in an era of recession and high unemployment. But just as the International Monetary Fund exists in part to help nations avoid competitive depreciations of currency and beggar-thy-neighbor monetary policy, so should the ILO be used to promote higher labor standards on a universal basis despite the tendency of nations in the developing world to seek to keep labor costs down as a means of promoting exports.

Thus, if the United States were to rejoin the ILO at an early date, it could seek higher international labor standards, and could encourage international competition based upon something other than the exploitation of labor. Such gradual improvements as are feasible are inherently in the interests of United States labor, and are explicitly part of the ILO's Constitution:

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conference. Whether congressional review is in fact, rarely exercised, the absence of such review of ILO related matters is an example of congressional abdication which has permitted the United States role in the ILO to deteriorate.

<sup>112</sup> L. HENKIN, *FOREIGN AFFAIRS AND THE CONSTITUTION* 147 (1972).

PREAMBLE . . . Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries; . . .

ANNEX (Declaration of Philadelphia), Article I: (c) poverty anywhere constitutes a danger to prosperity everywhere.<sup>113</sup>

For example, if the workers of the United States wish to implement a national health service in the United States, they cannot hope to do so as long as other nations do not provide adequate health care (and, therefore, appropriate revenues) for their workers. There is too much concern about further reducing the competitiveness of United States business. But Article III(f) of the Declaration of Philadelphia provides for the goal of "the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care." Article III(g) calls for "adequate protection for the life and health of workers in all occupations." A newly reconstituted United States delegation to the ILO could seek to capitalize on this language to the benefit of workers everywhere, including the United States. It should be pointed out that President Carter's withdrawal from the ILO said nothing to denigrate the continued commitment of the United States to the goals laid down in the Constitution and Annex of the ILO in 1934 and 1946. We have withdrawn for particular political reasons and we can rejoin for the same sort of reasons, but our commitment to the vision of the ILO remains unquestioned.<sup>114</sup>

Once Conventions are in force, there is a problem of insuring that states party to them respect their obligations, and pass and enforce appropriate municipal laws. Unlike the European Community,<sup>115</sup> the ILO is too broad in membership to pass detailed legislation itself, or to have its own court in which to enforce it. It does, however, have an extensive, quasi-legislative mandate in its sphere, and the most highly developed enforcement mechanism of any of the U.N. agencies or other international human rights organizations.<sup>116</sup>

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<sup>113</sup> Phil. Dec., *supra* note 25.

<sup>114</sup> PRES. DOC., *supra* note 2.

<sup>115</sup> A. PERRY & S. HARDY, *EEC LAW* (1973); SWEET & MAXWELL'S *EUROPEAN COMMUNITY TREATIES* (K. Simmonds ed. 1975); B. Rockwood, *Labour Mobility and Social Security in the European Community: A Study in Supranational Law Making and Economic Policy* (1974) (unpublished manuscript on file at the University of Chicago Law School Library).

<sup>116</sup> F. Wolf, *supra* note 37.

The pertinent provisions in the Constitution of the ILO are found in Articles 24 through 34, and provide for complaints of violations of Conventions, Commissions of Enquiry, and action by the Governing Body and the Annual Conference, including possible referral to the International Court of Justice. The explicit sanctions are few: data may be published, and information may be sought. But publicity, moral suasion, and the limitation of enforcement to those Conventions (apart from freedom of association), which have already been ratified by a member, combine to provide a workable mix. The ultimate sanction is the implicit possibility of expulsion from the organization: "The Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith."<sup>117</sup>

One unique element of the enforcement mechanism is the role given to the private groups in the ILO. Article 24 provides that in "the event of any representation being made to the International Labour Office by an industrial association of employers or of workers" that a member state has "failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party," the Governing Body may refer this matter to the party concerned, and, if not satisfied with the reply, may publish the correspondence under Article 25. Furthermore, the Governing Body may establish a formal Commission of Enquiry upon complaint of any Convention Delegate, including private group representatives, under Article 26, so that "employers and workers who are represented on the Conference delegations may make a complaint leading to the establishment of a commission of inquiry." These procedures are an important precedent in granting international status as subjects of international law to private associations, to their conference delegates, and to individual persons as well.<sup>118</sup>

Apart from the Constitutional mechanism for redress of complaints, the ILO has a number of non-constitutional devices, including an inquiry by a Committee of Experts empowered to make "observations,"<sup>119</sup> which then may be considered by the Conference Committee on the Application of Conventions and Recommendations at the next annual conference. This Committee, in turn, may obtain further information, and make such reports as it chooses to the full Conference for

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<sup>117</sup> ILO Constitution, art. 33.

<sup>118</sup> F. Wolf, *supra* note 37, at 23.

<sup>119</sup> Note, *supra* note 4, at 627-31.

further action. In particular, "since 1957 the Conference Committee has been empowered to single out for special reprobation in its report . . . those nations which persistently have" violated either Conventions or undertakings made to the inquiries.<sup>120</sup>

A third mechanism, complementing the Committee of Experts, is that of the Governing Body's Committee on Freedom of Association, which is empowered to investigate violations of the Convention on Freedom of Association, one of the fundamental objectives of the ILO.<sup>121</sup>

All of these mechanisms are limited, of course, by the fact that they cannot be used to investigate charges against nations which simply refuse to ratify the pertinent Conventions.

The United States complains that developments since World War II have weakened severely the ILO's tripartite structure. Secretary Kissinger, in his letter of intent to withdraw, stated in relevant part:

*The Constitution of the ILO is predicated on the existence within member states of relatively independent and reasonably self-directed worker and employer groups. The United States fully recognizes that these assumptions, which may have been warranted on the part of the Western democracies which drafted the ILO Constitution in 1919, have not worked out everywhere in the world; in truth only a minority of the nations of the world today have anything resembling industrial democracy, just as only a minority can lay claim to political democracy. . . . [R]evising the practices and arrangements of the ILO is not going to restore the world of 1919 or of 1944. It would be intolerable for us to demand that it do so. On the other hand, it is equally intolerable for other states to insist that as a condition of participating in the ILO we should give up our liberties simply because they have another political system. We will not. Some accommodation will have to be found. But if none is, the United States will not submit passively to what some, mistakenly, may suppose to be the march of history. In particular, we cannot accept the Workers' and Employers' Groups in the ILO falling under the domination of governments.*<sup>122</sup>

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<sup>120</sup> *Id.* at 629; E. LANDY, *supra* note 31, at 102. The author examines the problem of retrogression from accepted standards such as those against forced labor by new nations in the name of development goals. See also THE IMPACT OF INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS (ILO 1976).

<sup>121</sup> *Id.*

<sup>122</sup> Kissinger, *supra* note 4, at 1582 (emphasis added).

The substance of the United States complaint is that the non-government delegates from non-Western states no longer are chosen freely to represent worker and employer interests, but rather operate as agents of their governments. Compounded by the increase in non-Western states over the years since 1946, the 22 Member States characterized by the United States Chamber of Commerce as "industrialized, market economy countries (IMEC)"<sup>123</sup> have been put at an extreme voting disadvantage in the annual Conference. The effective extension of governmental control over labor and employer delegates from many non-European states also means that freely elected labor and employer delegates in fact may be unable to control their own "group" in subsequent Annual Conferences, thus giving non-Western Member States direct and indirect voting control over the Governing Body of the ILO, despite the tripartite selection procedure for that institution set forth in Article 7 of the Constitution.

How valid is this American complaint? In particular, is Secretary Kissinger's argument that, while we cannot change history, we nonetheless must defend group autonomy within the Conference against government domination, an historically and legally defensible position?

Article 3 of the ILO Constitution provides that each member state shall send four delegates, two selected by the government of the day, and one each selected to represent the workers and employers of the Member State. The language of Article 3(1) provides: "of whom two shall be Government delegates, and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members." The phrase "representing" would seem to suggest, without compelling, the interpretation of Secretary Kissinger and the IMEC countries, that these latter delegates be in some sense selected by the groups in question, with some degree of independence.

Article 3(5) provides, however, only that the "Members undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organization, *if such organizations exist*, which are most representative of employers or workpeople, as the case may be, in their respective countries." (emphasis added) If such organizations do not exist, or if the appropriate organizations in a Member State are for all practical purposes agents of the state apparatus or of the ruling political party, there is nothing in Article 3 to preclude said state from being permitted to join the ILO and sending whomever it wishes to represent the workers' and employers' (*i.e.*, the labor and commerce branches of the state) interests in the ILO.

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<sup>123</sup> R. Leshner, *supra* note 87, at 4.



That this interpretation of Article 3 is the correct one is deduced from the fact of membership of many one-party states in the ILO, and the very claims of the various Western states that these nations violate the spirit of tripartism.<sup>124</sup> The fact is, freedom in the world is in a poor way according to Western conceptions, and if every nation which lacked genuinely independent unions or businessmen were barred from participating in the ILO, it would be little more than a club of industrial states with little or no need for guidance in industrial relations.<sup>125</sup>

Of course, Article 3 does seem to be anomalous. It poses more of a burden upon free societies than on authoritarian ones, since it mandates, by its terms, consultation only if there is any independent body to consult with. If there is no such body, there is no need to consult.<sup>126</sup> On the other hand, to read it this way is, perhaps, to miss the point. The Constitution of the ILO does not require, as a condition of membership, that nations operate on an industrialized, free market economy basis. It does, however, seek to promote peace through the improvements of a class of society which cuts across national boundaries, the working class. It recognizes that, regardless of the political and social structure within societies and states, there are persons who may be characterized primarily as government functionaries, commercial or industrial executives, and laboring persons or workpeople. Therefore, it requires a functional, tripartite approach to the conduct of business within the ILO, regardless of the internal structure of the member states.

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<sup>124</sup> Cf. Hudson, *supra* note 26.

<sup>125</sup> *Freedom at Issue*, Wall St. J., Jan. 17, 1977, at 12, col. 1; N.Y. Times, Dec. 25, 1977, at 11, col. 1; Wall St. J., Dec. 29, 1977, at 8, col. 1. These Freedom House statistics reflect an essentially western civil libertarian definition of freedom and are heavily relied upon by Senator Moynihan at various times. Their accuracy and meaning in historical context is open to discussion.

<sup>126</sup> Mr. Coates, of the United Kingdom employers' delegation, stated at the 1977 Labour Conference: "I would just like to add my feeling that there is little point in bringing tripartite delegations to Geneva if they only speak with a single voice because of political considerations. Tripartism does not seem to work in politics." Provisional Record, *supra* note 79, at 11. Can this be true? Mr. Steiner of the Chamber of Commerce believes individual employers from Third World countries have been threatened by their government delegates and compelled to vote as directed. J. Steiner, *supra* note 87. Even so, in the technical work of the conference it is likely that delegates for worker or employer interests within any society will have a different viewpoint. The ILO postulates tripartism as a working hypothesis for some members, and a goal for all others. The ILO should not be criticized because the global community does not, at present, live up to all of its ideals.

As a consequence, it would seem to this writer that the complaint of government dominance of non-governmental delegates in third world or socialist states is misplaced. As long as the appropriate functional representation of the three "tripartite" groups occurs in the ILO technical discussions of Conventions, Recommendations, and Reports, it is not constitutionally significant how they were chosen at home.

Furthermore, Article 3(8) provides that the names of delegates shall be channeled through the member state to the International Labour Office by the Government. Thus, if the Government declines to submit a name, an otherwise qualified worker or employer may not attend the Conference. This policy is followed, in fact, by the United States, in its requirement of security screening of potential delegates, to assure that none of them are Communists or Communist sympathizers.<sup>127</sup>

Additionally, there has been some criticism in the past of the way in which a small group of American trade unionists has dominated the attitude of American labor towards the ILO, to the exclusion of those who might wish to make use of its opportunities in other than political, cold war terms. While the AFL/CIO is nominally the representative of the largest group of trade unionists in this country, it has done little to translate that into constructive policy designed to put the ILO to use for the benefit of American labor. Thus, the American Chamber of Commerce President was truthfully able to write to President Carter on October 3, 1977:

While some persons and groups may find reasons to justify continuing participation, the "most representative" organizations of employers and workers have said they want out. These organizations have participated in the working meetings of the ILO for more than thirty years. They are well able to judge the merit of the ILO, or the lack of it. Lacking a significant constituency for continuing participation, the ILO is a political "loser" for the Administration, and for United States foreign policy.<sup>128</sup>

It is remarkable that, after more than forty years of United States involvement in the ILO, with the United States in the forefront of improving the conditions of labor in the free world, that there should, in fact, be *no* "significant constituency" for the only international institution dedicated to improving labor conditions in other countries. Perhaps both American business and labor are at fault in their own

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<sup>127</sup> J. Steiner, *supra* note 87. See 94 CONG. REC. 8172 (1948); S.J. Res. 117, § 3, 80th Cong., 2d Sess. (1948).

<sup>128</sup> R. Leshner, *supra* note 87, at 3.

priorities, and are now only too glad to "forget" the tremendous need that exists beyond our borders. It is not clear, however, that such parochialism, draped in the flag of "tripartism," should provide the basis for United States Government policy on this matter.

This is not to downplay entirely the seriousness of the dispute over the meaning of tripartism. Tripartism has important symbolic and practical implications for the ILO, as well as being a source of controversy. Its symbolic value lies, like its procedures with respect to lodging complaints against violations of Conventions, in the standing it gives to nongovernmental entities. Even unitary states must send tripartite delegations. In doing so, they are forced to recognize, internationally, the legal status of private associations of private persons, as possessed of international legal personality, legal rights and obligations. Thus, the ILO's tripartite, functional division of representation serves as a wedge upon which the admittedly weak international legal standing of the individual, and his human rights, has been built into the evolving United Nations system.<sup>129</sup>

Furthermore, as a practical matter, tripartism permits Western, industrial societies greater leverage within the ILO than they would otherwise have on a straight, one-state, one-vote basis. Strange as it may seem, the ILO's political activities which have so alienated the American delegation, are restrained rather than enhanced by the present Constitutional structure. While proposed changes in the rules under which each group selects its membership on the Governing Body of the ILO could result in a reduction in Western influence, these proposals have thus far been defeated, just as our own proposals to reform the ILO in "our direction" have also been defeated through procedural devices.<sup>130</sup> Of course, now that the United States no longer is a member of the ILO, the chances would seem good that any changes in the ILO system will drive it away from, rather than towards, the sort of "accommodation" sought in the Kissinger letter.

Apart from affecting the structure of the Governing Body and various committees of the ILO, tripartism has a considerable legitimizing effect in Member States with respect to those Conventions and Recommendations which actually are adopted. Just because the delegations must divide along functional lines and prepare separate reports from the three perspectives mandated, the documents resulting from this process are more likely to take into account realistic appraisals of

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<sup>129</sup> J. BRIERLY, *THE LAW OF NATIONS* 122-25, 292 (6th ed. 1963).

<sup>130</sup> Provisional Record, *supra* note 79.

what is desirable, and what is possible, in the Member States. Additionally, tripartite drafting ought to make it easier to attain ratification of conventions in those states which have viable political processes, where the comments of the workers and employers organizations could have an influence on the domestic result. In turn, this political credibility in the Member States tends to lend legal authoritativeness to such documents as the International Labour Code, both as prescription, and as a source of developmental guidance for new states.<sup>131</sup>

But it is the role of tripartism as a source of controversy, that has of necessity most concerned us in this article, because of its invocation in the litany of abuses raised by partisans of withdrawal. The other three objections of Secretary Kissinger in his letter of intent, and more specific complaints against the ILO with regard to the attitude of the International Labour Conference towards the Palestine Liberation Organization, really only reflect the concerns which have been raised here—that the Western, market-oriented, democratic states are increasingly outvoted in the organization, despite their importance in contributing the largest shares of the ILO budget, and that the policies announced by the Annual Conference are therefore not in keeping with the perceived interests of those states. Identifying as they do with their own interpretation of tripartism and of the goals of the ILO, as conceived when it was founded, the United States finds it increasingly difficult to accept current realities. This difficulty surely must be shared by the business and labor delegates from the United States. Even though many of these individuals may have long experience in the ILO and in dealing with international labor problems, they are not professional diplomats, and in the very process of being complete advocates of their private causes they may fail to see beyond the immediate, political rhetoric to the real, long term interests of the United States, or the policy as communicated by a newly elected administration.

For example, the Kissinger letter criticizes the ILO for being selective in whom it attacks for violations of human rights, and for doing so

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<sup>131</sup> Although the annual Chart of ILO Ratifications published by the ILO makes clear that few nations are bound vis a vis each other by any particular Convention, many nations have ratified numerous Conventions, and the entire body has been compiled in a systematically arranged two-volume set. *THE INTERNATIONAL LABOUR CODE—1951* (ILO 1952). If revised in light of new Conventions, and annotated by reference to national legislation and practice, and the work of other international organizations, this code approach to international labor “legislation” could lend added weight and cohesiveness to the work of the ILO in the future.

in the General Conference in disregard of the findings of the Committee of Experts, or of other appropriate ILO bodies. Query: Why should we pick out one institution of the ILO, the General Conference, and denounce the whole organization for the faults of one phase of that institution's deliberations? If the Committee of Experts, the Governing Body, and other groups within the ILO structure are in fact fair and objective, should we not emphasize that fact in our analysis, and thus discount the outbursts of delegates and groups for what they really are?

Furthermore, although it is unfair in theory to attack only certain states for actions of which many are guilty, in practice there is no other way to focus the energies of such an institution to have any effect. Assuming Israel and Chile are guilty of some human rights violations, for whatever reason, and assuming further that the make-up of the Governing Body is such that neither Israel nor Chile could ever be cited for violations of rights by the appropriate committees, it does not follow that those violations do not exist at all. "Due process" is a valid concept, but the process itself must be fair, and perceived as fair. It may be open to further research, at least, as to whether or not violations in Western societies actually could ever be the subject of formal action in the Governing Body and the various committees, as presently constituted, any more than violations of Soviet or Third World Countries are likely to be criticized in the final voting of the General Conference. Unless the Conference is to be a tool of the committees and the Governing Body, it is not unreasonable that it should have the power to add to its own agenda. We should recognize that and accept it as such, observing that if, societies such as Israel and Chile are likely to pay more heed to criticism of this sort than either the Soviets or South Africa, for example, then some individuals may in the end benefit regardless of the political injustice of such "selective" attacks.<sup>132</sup>

The ILO does not have weighted voting, as does the International Monetary Fund.<sup>133</sup> Its structure, for good or ill, reflects the common-

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<sup>132</sup> Consider the recent referendum in Chile provoked by U.N. condemnation of Chilean policies. While it may have been predetermined in outcome, it demonstrates Chilean sensitivity to international criticism. See, e.g., Buckley, *Chile's Chief Has Right to be Irked*, Toledo Blade, Jan. 11, 1978, at 21, col. 1; *Israelis Accused of Beating Palestinians*, The Plain Dealer (Cleveland), Jan. 13, 1978, at 8A, col. 1.

<sup>133</sup> Agreement of the International Monetary Fund, art. XII(5)(a) & (b). See Selected Dec. of the International Monetary Fund and Selected Documents, 8th Issue, Decision No. 180-5, June 25, 1947, at 161 (1976); and A. LOWENFELD, *The International Monetary System*, in 4 INTERNATIONAL ECONOMIC LAW (1977).

place formula of one-state, one-vote, even though that formula is obscured by the tripartite system of shares and the residual powers of the nations of "chief industrial importance." Although this system does not reflect the realities of power politics, it does reflect the current law of the international system, which advocates respect for the sovereign equality of nations.<sup>134</sup> Our choice is not whether to change this, but to work with it, to promote fairness and respect for equal treatment in like cases. A decision in the U.N. Commission on Human Rights to consider fully the case of human rights violations in Uganda would be a step in the right direction in this respect. There seems no reason in principle why such progress ought not to be possible in the forum provided by the ILO system.

A compromise formula to achieve American and European Community objectives in the ILO may well be achievable. If the West were to agree to the elimination of the "veto" in Article 36 of the Constitution of Constitutional Amendments belonging to the nations of chief industrial importance, this would eliminate the last vestige of legal "inequality" for member states of the ILO. If this offer were coupled with Western support for more representation of the lesser developed nations (LDC) on the Governing Body and various industrial committees of the ILO, and Western support for taking greater account of differences in circumstances of LDC's with respect to their abilities to meet global labor standards (as is already provided for in Article 19(3) of the Constitution),<sup>135</sup> we well might receive in exchange LDC support for rejecting any interference in the "group autonomy" of the employers and workers groups, including avoidance of any formal geographical quota system. This would deny the Soviets their major objectives in the ILO at present.

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<sup>134</sup> See Draft Declaration on Rights and Duties of States, art. 5, Report of the International Law Commission, 4 U.N. GAOR Supp. (No. 10) 7, U.N. Doc. A/925 (1949). "Every State has the right to equality in the law with every other State." *Id.* But see the distinction between legal and political sovereignty in G. SCHWARZENBERGER & E.D. BROWN, A MANUAL OF INTERNATIONAL LAW (6th ed. 1976).

<sup>135</sup> ILO Constitution, art. 19(3). This article provides "In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climactic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries." The tendency in recent U.N. and U.N.-agency documents to phrase proposals for improvement in terms of "progressive development" rather than immediate compliance is a sensible compromise in line with this analysis.

The language necessary to adapt labor standards to the exigencies of individual countries and their developmental needs, can be found in formulae such as "progressive attainment" of certain logically connected, and gradually more advanced, labor standards. If they were phrased in terms of discrete periods of time for progression from one stage to the next, dated from the time of accession by the individual member in question, the successful experience of the European Community in the gradual implementation of transnational standards in labor and social matters, as well as trade issues, might well be emulated by the ILO.<sup>136</sup>

Support for the developmental approach to human rights, and the development aims of the United Nations system, already has been observed in the statements of Secretary Marshall and Ambassador Wells, *supra*. It would be consistent with the entire approach of the Carter Administration towards human rights in the rapidly changing international system of the last quarter of the 20th century to undertake a reappraisal of its attitude towards the ILO. The Administration should seek undertakings by that body and its members to support a strategy, such as is outlined above, together with assurances for fairer action at the Conference with respect to consideration of charges of violations of ILO Conventions, so that proper procedures will be followed in the future.

Even if such undertakings amount to less than a 100% guarantee that we shall achieve all our objectives<sup>137</sup> immediately, we then should announce that ILO budgetary cutbacks are consistent with our own goals in making the U.N. system more lean and efficient,<sup>138</sup> and that we have determined that in the interests of avoiding significant institutional harm being done to the ILO in the absence of our vote at the next Conference, we best can "monitor" the progress of the ILO as active participants in its work.

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<sup>136</sup> B. Rockwood, *supra* note 115.

<sup>137</sup> "We cannot alter the fact that ILO activities involve politics. All social problems are necessarily political problems." Provisional Record, *supra* note 79, at 2 (Mr. Muhr, West German Workers' Delegate).

<sup>138</sup> COMM. REPORT, *supra* note 8. See Statement of Congressman Lester L. Wolff, United States Representative in Committee Five, on the scale of assessments for apportionment of the expenses of the U.N., Press Release No. USUN-82 (Oct. 21, 1977); Statement by Congressman Wolff, on the budget program of the U.N. for 1978-79, Press Release USUN-149 (Oct. 20, 1977); *U.S. Criticizes U.N. on Waste in Budget*, N.Y. Times, Dec. 21, 1977, at A13, col. 6.

Such a strategy would place our withdrawal from the ILO in proper context, as a political act designed to make a point. A point has in fact been made, without totally abandoning all hope of rehabilitating and using its widely recognized and respected machinery for the protection of labor rights through labor standards and development programs. This strategy is rendered more persuasive when we examine the Carter Administration's human rights strategy in detail, and seek to reconcile our actions to date regarding the ILO, with our overall strategy for global human rights.

The cornerstone of President Carter's foreign policy is a commitment to an aggressive, internally consistent, and flexible human rights offensive. Even before he was sworn into office, it was clear that his foreign policy would be based on a systematic articulation of American human rights objectives. The *New York Times* editorialized on January 11, 1977:

We shall soon have an Administration in Washington that is pledged to give human rights a central place in its foreign policy. We welcome that change from recent practice, understanding that it raises some extraordinarily difficult questions.<sup>139</sup>

Going beyond mere words, Carter called for enhanced public visibility for the United Nations Human Rights Commission, and explicitly recognized the link between human rights and development "to bring greater prosperity" to the people of all countries.<sup>140</sup> In his March 17, 1977 speech to the Permanent Representatives of the United Nations, only eight weeks into his term of office, President Carter clearly articulated this commitment to human rights, and to the U.N. system:

The search for peace and justice means also respect for human dignity. All the signatories of the U.N. Charter have pledged themselves to observe and to respect basic human rights. Thus, no member of the United Nations can claim that mistreatment of its citizens is solely its own business. Equally, no member can avoid its responsibilities to

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<sup>139</sup> N.Y. Times, Jan. 11, 1977, at 32, col. 1.

<sup>140</sup> Pres. Carter, Arms, Economic Prosperity, and Human Rights, speech before the Permanent Representatives of the United Nations (Mar. 17, 1977), reprinted in Dep't State News Release (Bureau of Public Affairs); full text in N.Y. Times, Mar. 18, 1977, at A20, col. 1; *Carter Calls on U.N. to Honor Its Pledges*, Wall St. J., Mar. 18, 1977, at 7, col. 1. See the initial discussion, support and criticism of the Carter policy at the 1977 Annual Meeting of the Am. Soc'y of Int'l L., San Francisco, Apr. 1977; *Human Rights as New Policy by a New Administration*, 1977 PROC. AM. SOC'Y INT'L L. 68.



review and to speak when torture or unwarranted deprivation occurs in any part of the world.

The basic thrust of human affairs points toward a more universal demand for fundamental human rights. The United States has a historical birthright to be associated with this process.<sup>141</sup>

Following up on this speech, the Carter Administration's legal acts in this area included the signature of the American Convention on Human Rights, on June 1, 1977, at the Pan American Union,<sup>142</sup> and the signature of the International Covenant on Economic, Social and Cultural Rights, and of the International Covenant on Civil and Political Rights, at the Economic and Social Chamber of the United Nations, on October 5, 1977.<sup>143</sup>

Even as he announced United States withdrawal from the ILO, Carter spoke before the World Jewish Congress and noted the intimate connection between his human rights objectives, and the religious and spiritual connections which he believes bind America and the rest of the world in the quest for peace.

In large measure, the beginnings of the modern concept of human rights go back to the laws and the prophets of the Judeo-Christian tradition. I have been steeped in the Bible since early childhood, and I believe that anyone who reads the ancient words of the Old Testament with both sensitivity and care will find there the idea of government as something based on a voluntary covenant rather than force; the idea of equality before the law and the supremacy of law over the whims of any ruler; the idea of the dignity of the individual human being and also of the individual conscience; the idea of service to the poor and to the oppressed. . . . This organization has made a major contribution to insuring that human rights became a part of the Charter of the United Nations as one of its three basic purposes, along with the preservation of peace and economic progress . . . no government can now pretend that its mistreatment of its own citizens is merely an internal affair. . . . *The public demonstration of our own government's commitment to human rights is one of the major goals that my Administration has set for U.S. foreign policy.* The emphasis on human rights has raised the level of consciousness around

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<sup>141</sup> Pres. Carter, *supra* note 140. Secretary of State Vance's remarks parallel those of the President, 71 AM. J. INT'L L. 759 (1977).

<sup>142</sup> 75 DEPT STATE BULL. 28 (1977).

<sup>143</sup> 75 DEPT STATE BULL. 586 (1977).

the world and is already beginning to help overcome the crisis of the spirit which recently has afflicted the nations of the West.<sup>144</sup>

And as the first year of the Carter Administration wound to a close, Congressman Charles W. Whalen, Jr., a member of the United States Mission to the 32nd Session of the United Nations, reaffirmed the administration's stand at the commemoration of Human Rights Day, December 9, 1977: "This year President Carter has made human rights a cornerstone of his foreign policy."<sup>145</sup>

In his signature of the several human rights covenants, and his emphasis on the United Nation's human rights machinery, President Carter has recognized that human rights can and must be translated from political confrontation into legal issues properly of concern in international, legal fora. In fact, the principle of legality is a fundamental basis for understanding the steps Carter has taken. As Article 29(2) of the Universal Declaration of Human Rights states:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others . . .<sup>146</sup>

Thus, Arthur W. Rovine, Assistant Legal Adviser in the Department of State, has emphasized the centrality of Senate ratification of the Human Rights treaties and the Genocide Convention in his statement to the American Society of International Law in April 1977, noting that their ratification

would require this country to grapple with norms accepted by the rest of the world, including economic, cultural, and social rights. [In addition] . . . the agreements give the United States an additional forum in which to argue its positions; . . . they establish norms for domestic protection of human rights . . . [and] an international law continues to become intertwined with domestic law, the conventions

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<sup>144</sup> *U.S. Responsibilities toward Peace and Human Rights*, Dep't State News Release (Nov. 2, 1977) (emphasis added).

<sup>145</sup> U.S. Mission to the U.N., Press Release No. USUN-144 (1977).

<sup>146</sup> The text of the Universal Declaration of Human Rights is conveniently reprinted in many sources. See DOCUMENTARY SUPPLEMENT TO CASES AND MATERIALS ON THE INTERNATIONAL LEGAL SYSTEM, at 45 (N. Leech, C. Oliver & J. Sweeney eds. 1973); U.N. Office of Public Information Pamphlet OPI-15-18574-Sept. 1973-150M. The principle of legality in the covenants is analyzed in Garibaldi, *General Limitations on Human Rights: The Principle of Legality*, 17 HARV. INT'L L.J. 503 (1976).

serve to increase the effectiveness and the efficiency of the composite regime.<sup>147</sup>

The Carter policy accepts the Moynihan thesis that the U.N. Charter clearly does mandate acceptance of "liberal" social systems by its members.<sup>148</sup> But Carter applies a logical corollary, which Moynihan misses, that in order to enforce the law, we need to be full partners in the international legal machinery, thus creating the urgency of full Senate ratification of the three noted conventions. Further, this underscores the recognition by Carter that human rights perhaps is a more complicated notion than Mr. Moynihan would care to acknowledge publicly at this time; and that a multiplicity of fora is useful for debate even if the United States is likely to be consistently outnumbered and outvoted at the close of debate.<sup>149</sup>

Furthermore, the conventions all serve to "establish norms" in international and municipal law which can be used to enhance the actual rights of persons. It is curious to note, therefore, that all three of these points—the complexity of the definition of rights, the need for fora for debate, and the need to build legal norms even in the face of weak or biased enforcement—argue equally for remaining in and working with the International Labour Organization and its human rights programs.

President Carter has shown, by word and deed, a more finely honed understanding of the complex meaning of the term human rights than most of his critics.<sup>150</sup> He clearly relates human rights to peace, justice, and dignity, and speaks of "torture or unwarranted deprivation" as being equally violative of human rights. In his March 17th speech, he clearly was recognizing as human rights a complex of several distinct types of rights which are capable of discrete analysis, ranking, and discussion concerning their degree of importance and actual, "universal" recognition.<sup>151</sup>

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<sup>147</sup> PROC. AM. SOC'Y INT'L L., *supra* note 140, at 68-71.

<sup>148</sup> Moynihan, *supra* note 18, at 465. The author restates his opinion in *The Politics of Human Rights*; COMMENTARY, Aug. 1977, at 19.

<sup>149</sup> The Lima News, Apr. 30, 1977, at 20, col. 1. This article contains an interview with the outgoing Human Rights Division Director of the U.N., Marc Schreiber. See also Nossiter, *U.N. Bias on Human Rights*, Manchester Guardian Weekly, Dec. 11, 1977, at 15, col. 3.

<sup>150</sup> Pres. Carter, *supra* note 140, at 3.

<sup>151</sup> *Definitions and Possibilities on Human Rights*, Manchester Guardian Weekly, May 15, 1977, at 16, col. 1.

Senator Moynihan clearly thinks the President has overemphasized developmental goals, and underplayed the concerns of civil and political liberties, in his human rights push.<sup>152</sup> While Professor Arthur Schlesinger, Jr., has noted that raising the issue of human rights immediately raises matters of application which may not, and, indeed, do not leave the United States untouched.<sup>153</sup> The United States, the Western European states, and the Soviet Bloc states all have acknowledged similar obligations in the Helsinki Final Act's recognition of the interdependence of "civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person."<sup>154</sup>

The meaning of these rights, and the capacity of the international system to enforce them, is the subject of the recently concluded talks at Belgrade, Yugoslavia, reviewing the results of the Helsinki Conference. Beyond the European and Atlantic context, the universality of these rights in non-Western terms may be somewhat in doubt.<sup>155</sup> Nonetheless, their universal, legal effect is assured by the acquiescence of all states of the United Nations in the Charter and the several subsequent United Nations human rights conventions. This legal effect may depend upon voluntary cooperation for its enforcement or for the enhancement of its effectiveness.<sup>156</sup> The principles of international law of consent and acquiescence, and the plain meaning rule of interpretation of treaties, all operate together to demonstrate that the member states of the United Nations have undertaken affirmatively to uphold

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<sup>152</sup> *Moynihan Charges Carter Is Neglecting East-West Conflict*, N.Y. Times, June 10, 1977, at A5, col. 1. The article reports Senator Moynihan's speech at Baruch College where he formed the basis for his August article in *Commentary*. He charged Carter with ignoring the "central political struggle of our time—that between liberal democracy and totalitarian Communism." However, it is the thesis of this article that by continuing to focus on the East-West conflict to the exclusion of other important issues, it is Moynihan, not Carter, who is ignoring the real "war of the future." See Dahrendorf, *International Power: A European Perspective*, 56 FOREIGN AFF. 72 (1977).

<sup>153</sup> Schlesinger, *Human Rights: How Far, How Fast?*, Wall St. J., Mar. 4, 1977, at 10, col. 4.

<sup>154</sup> Final Act of the Conference on Security and Cooperation in Europe, Principle VII: The Declaration of Principles Guiding Relations Between Participating States, § 1(a): Questions Relating to Security in Europe, Aug. 1, 1975, 73 DEPT STATE BULL. 323 (1975); 14 INT'L LEGAL MATERIALS 1293 (1975).

<sup>155</sup> Berger, *Are Human Rights Universal?* COMMENTARY, Sept. 1977, at 60.

<sup>156</sup> G. SCHWARZENBERGER & E.D. BROWN, *supra* note 134, at 258.

all these general sorts of rights in accordance with international law and their own municipal law.<sup>157</sup>

Perhaps because of an increased, global recognition of factual interdependence on a variety of levels, the legal status of the United Nations Universal Declaration of Human Rights of 1948 has become stronger since Brierly commented that

it was not intended to be a legal instrument binding on members. Nevertheless, it has gained considerable authority as a general guide to the content of fundamental rights and freedoms as understood by members of the United Nations, and it is important as providing a connecting link between different concepts of human rights in different parts of the world.<sup>158</sup>

The speech of the United States U.N. Ambassador, Andrew Young, to the concluding session of the 32nd United Nations General Assembly would seem to support this view.<sup>159</sup>

Thus, President Carter's remarks in March 1977 may be seen, in context, as evidence of acceptance by the United States of the position that human rights guarantees of the United Nations system spell out legally effective duties, obligations, and rights which the international legal system must observe and protect.

The content of these legal duties needs to be further specified in order to comprehend the incongruity of the Carter rights initiative with his action in regard to the ILO. Once it is seen that the decision to withdraw was based primarily on domestic politics, that its international point (that we mean what we say) has been made sufficiently, and that there is more to be lost than gained by continuing to remain outside, then the next step can be a return to the ILO in strength to continue to carry out the overall Administration rights policy.<sup>160</sup>

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<sup>157</sup> *Id.* at 21-27, 118-21, 133-35.

<sup>158</sup> J. BRIERLY, *supra* note 129, at 294.

<sup>159</sup> Ambassador Andrew Young noted that there was in the U.N. an "emerging agreement that the time for opportunism on many issues before the U.N. is passing. The issues are too pressing, the dangers are too great." United States Mission to the U.N. Press Release No. USUN-150, at 5 (1977).

<sup>160</sup> A survey of the Department of State Bulletin for 1977 reveals no formal, written record of any policy debate within the Carter administration concerning the merits of withdrawal. This absence is in striking contrast to the numerous articles on other international topics of current importance. Possibly this was a deliberate move to create the appearance of harmony. There is, however, no basis in the record for judging the likelihood of any further move to rejoin the ILO. Presumably the United States would wish further concrete moves by the ILO to appease American complaints, but is this

Human rights, from the perspective of the international legal system, is a sometime thing, weakly established despite the binding declarations of nations, and many times honored in the breach.<sup>161</sup> The primary purpose of international law has been the avoidance of, or control of war.<sup>162</sup> The rights of individuals always have been approached with circumspection in international discussions, because they are likely to raise questions which inflame passions on a transnational scale, and thus weaken, rather than sustain, the primary goal of the traditionally conceived international legal system, the maintenance of peace.

President Carter, however, has perceived one of the fundamental, threshold realities of the last quarter of the 20th century, that human rights are an intrinsic requirement for the just society, including the just international society, and that peace and justice are indivisible phenomena. There can be no peace without justice. As a necessary corollary, there can be no justice unless justice is defined in universally acceptable terms, including the human rights component of justice.<sup>163</sup> President Carter's statements, and those of his administration's spokesmen on these matters, clearly demonstrate a commitment to a

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more likely to occur without the American vote in the ILO? The loss of the United States 25% budgetary contributions was a blow to the ILO, but not unanticipated, and the ILO did survive from 1919 to 1934 without United States membership. It is more likely that our self-imposed exile will last as long as we choose to permit it. Meanwhile, the Third World majority in the ILO is able to promote its views unhampered by the presence of a committed and articulate American delegation.

<sup>161</sup> G. SCHWARZENBERGER & E.D. BROWN, *supra* note 134, at 14, 84, 90, 282; J. STARKE, AN INTRODUCTION TO INTERNATIONAL LAW 68-69, 357-64 (7th ed. 1972). The author comments: "The formulation of binding general rules of international law for the protection of human rights . . . remains more a promise than an achievement." See also J. BRIERLY, *supra* note 129, at 292-99, 403. The existence of binding international legal duties respecting human rights is now conceded, and the true distinction is not between goals and binding rules, but between binding rules and their enforcement.

<sup>162</sup> Thus, the origins of the modern attempt to structure international legal order by treaty began with the 1907 Hague Conventions, and these were subject to the classic "joker-in-the-deck", self-defense. G. SCHWARZENBERGER & E.D. BROWN, *supra* note 134, at ch. 7. Starke notes that "[t]he main object of international law has been to produce an ordered rather than a just system." J. STARKE, *supra* note 161, at 3. Yet he notes a more recent trend towards seeking justice among states. *Id.* at 3-4. The Carter human rights policy seeks to avoid war by striking at its cause in human misery and underdevelopment, in distinct parallel with the ILO's Declaration of Philadelphia.

<sup>163</sup> See discussion in J. STARKE, *supra* note 161, at 3-4; *Human Rights and the "Single Standard,"* N.Y. Times, Jan. 11, 1977, at 32, col. 1.

tripartite definition of human rights designed to meet this requirement of universal acceptability.

For example, Deputy Secretary of State Warren Christopher, speaking before the August 1977 meeting of the American Bar Association, stated that human rights must be defined to include:

First, the right to be free from governmental violation of the integrity of the person. Such violations include torture; cruel, inhuman, or degrading treatment or punishment; arbitrary arrest or imprisonment; denial of fair public trial; and invasion of the home . . .

Second, the right to the fulfillment of such vital needs as food, shelter, health care, and education. The stages of a nation's economic development will obviously affect the fulfillment of this right . . .

Third, the right to enjoy civil and political liberties — freedom of thought, of religion, of assembly, of speech, of the press; freedom of movement; . . . freedom to take part in government. . . .<sup>164</sup>

The importance of this recognition and this definition should not be underestimated. As President Carter noted in his October 4, 1977, speech to the 32nd United Nations General Assembly:

We have already become a global community — but only in the sense that we face common problems and share, for good or evil, a common future. In this community, power to solve the world's problems — particularly economic and political power — no longer lies solely in the hands of a few nations. Power is now widely shared among many nations with different cultures, different histories, and different aspirations. The question is whether we will allow our differences to defeat us or whether we will work together to realize our common hopes for peace.<sup>165</sup>

The Administration's analysis of the urgency of the current crisis is supported in the legal and social science literature concerning the stability and future of the international system.<sup>166</sup> In this writer's

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<sup>164</sup> W. Christopher, *Human Rights: Principle and Realism*, speech before the American Bar Association (Aug. 9, 1977), reprinted in 75 DEPT STATE BULL. 269 (1977). But see Gilligan, *U.S. Seeks Improved U.N. Programs to Meet Basic Needs of World's Poor*, 75 DEPT STATE BULL. 204-05 (1977).

<sup>165</sup> Pres. Carter, *U.S. Role in a Peaceful Global Community*, Dep't State News Release (Oct. 4, 1977).

<sup>166</sup> M. CAMPS, *THE MANAGEMENT OF INTERDEPENDENCE: A PRELIMINARY VIEW* (1974); *WORLD POLITICS AND INTERNATIONAL ECONOMICS* (R. Bergsten & J. Krause eds. 1975); J. TINBERGEN, *RESHAPING THE INTERNATIONAL ORDER: A REPORT TO THE*

analysis; international law in the area of human rights is in the process of development to such an extent that we may fairly characterize the contemporary situation as a "revolution" in the international legal order, comparable to a "period of crisis" between periods of normal science in Thomas S. Kuhn's paradigm for the manner in which change occurs in physical science.<sup>167</sup> Strong views are heard on several sides, and the final theory upon which future conduct and investigation will be based has not yet been agreed upon or discovered.

It is my assumption that the best description of the values and priorities expressed by the United States under the Carter Administration in its conduct of foreign affairs can be found in the restatement of constitutional, contractual values, found in John Rawls' *A Theory of Justice*.<sup>168</sup> The two principles of justice, and the principle of the lexical priority of liberty, go a long way in providing a rationale and a defense for American concerns in international relations. Additionally, they serve to provide a connecting link between crucially interconnected policy decisions in domestic and international policy, such as energy policy, and between our conception of human rights and other facets of Carter's broader policy. If the United States is to continue to play a leading role in world affairs, shaping affairs rather than acting defensively, it needs to have a plausible and generally applicable set of principles upon which to base its proposals for international cooperation. And the conception that Rawls sets forth clearly states the set of concerns and priorities which support our conduct under President Carter.

First Principle. Each person is to have an equal right to the most extensive system of equal liberties compatible with a similar system of liberty for all.

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CLUB OF ROME (R.I.O.) (1976); A. LOVINS, *SOFT ENERGY PATHS* esp. at 11-24 (1977); ON THE CREATION OF A JUST WORLD ORDER (S. Mendlovitz ed. 1976). See also the growing literature in response to the U.N. Charter of Economic Rights and Duties of States, G.A. Res. 3281, 29 U.N. GAOR, Supp. (No. 31) 50, U.N. Doc. A/9631 (1974); and the response to the Charter in the Kissinger proposals, Kissinger, *Global Consensus and Economic Development*, 10 INT'L LAW. 711 (1976). The intimate connection between development and human rights is not accidental, though the nature of the relationship is part of the debate in this article. See Trubeck, *What is an Omelet?—What is an Egg? Some Thoughts on Economic Development and Human Rights in Latin America*, 1973 PROC. AM. SOC'Y INT'L L. 198. The ILO actively promotes the notion that freedom of association for labor influences development. G. CAIRE, *supra* note 35.

<sup>167</sup> T. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (1962).

<sup>168</sup> J. RAWLS, *A THEORY OF JUSTICE* (1971).



Second Principle. Social and economic inequalities are to be arranged so that they are both:

(a) to the greatest benefit of the least advantaged . . .

(b) attached to offices and positions open to all. . .

First Priority Rule (The Priority of Liberty) The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty. . . .<sup>169</sup>

The United States, which consumes a far greater percentage of the world's resources than it possesses of the world's population, is in no position to defend itself against the onslaught of the "new international order" advocates, and Soviet statism, except by recognizing once and for all that its social and economic advantages cannot be justified other than by using them to the advancement of the entire planetary system (Rawls' Second Principle, or "the difference principle"). As a counterpoint, we must demand as the *quid pro quo* of such a policy acceptance of the Priority of Liberty by our fellow states in the United Nations system.

The Carter definition of human rights, building on previous United Nations commitments, makes it clear that the United Nations and its members already have accepted, in principle, that liberty in the Western sense is part of the tripartite package of rights guaranteed by the United Nations system. By a mixture of advocacy and particular kinds of bargaining (linking aid to freedom for political prisoners, for example), the Carter Administration already is seeking to emphasize the importance that we, in the United States, give to the libertarian component of the human rights equation. It should go further, by seeking to work with those forces which make liberty essential to the very conception of successful development, and to avoid specific instances of conduct where the United States appears to sacrifice the liberties of others for short-term economic or strategic gain (for example, Kissinger's support of the Greek colonels).

By making this argument, I am not intending to assert that the international legal order will or must adopt the Rawls hierarchy of values as the basis for all future discussions. But it does appear to provide a fairer way of looking at issues than the current partisan array of viewpoints, and could provide a basis for the principles ranking of issues for negotiation in the North/South talks. There is no need at this point to discuss the extensive literature on or in response to Rawls'

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<sup>169</sup> *Id.* at 302.

work,<sup>170</sup> or to attempt to defend the origins of his principles of justice. Rather, it seems clear that they do mirror the only principled explication of actual American policy which may stand any success of carrying the day in evolving international discussions, and therefore should be given all the considered support possible.

In short, the world system is in such grave danger from so many quarters that cooperation and consensus are essential to the survival of the species. Human rights is the core area in which common ground must be found among nations, because it encompasses not just speech, or voting, or the right to assemble, but the whole panoply of political, economic, social, and cultural opportunities and potentials that add up to the human experience. If we cannot agree on what human rights are, and how they should be implemented in immediate, practical terms, then we cannot agree on a strategy for species survival.<sup>171</sup>

Unlike his predecessors, and some of his critics, President Carter recognizes that American conceptions of the good, and of the priority of liberty, are influenced by a somewhat misleadingly unique experience of affluence. We fail to perceive the legitimacy of demands for global economic rights as part of the human rights conception, because until recently we wrongly believed that our land was rich enough to provide a high standard of living for all without significant government intervention or public redistribution of wealth.<sup>172</sup> Similarly, the myth of America's limitless resources prevents us from adopting national energy conservation measures years after our allies and competitors in the world have perceived the necessity of so doing.<sup>173</sup> Most Americans, including most of those active in the political and legal discourse on the matter, simply fail to accept the degree to which the relevant debate has gone beyond the traditional frame of reference. If we talk only about civil liberties first, last, and always in our discussions of rights, we might as well be talking to a wall, and we should

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<sup>170</sup> See Frankel, Book Review, 5 COLUM. HUMAN RIGHTS L. REV. 547 (1973), and reviews cited therein.

<sup>171</sup> Works suggesting this point include: B. WARD, *THE HOME OF MAN* (1976); G. & P. MISCHKE, *TOWARD A HUMAN WORLD ORDER* (1977); E. LASZLO, *GOALS FOR MANKIND: A REPORT TO THE CLUB OF ROME ON THE NEW HORIZONS OF GLOBAL COMMUNITY* (1977).

<sup>172</sup> Greenfield, *The Absent Left*, HARPER'S, Sept. 1977, at 19-26. See also Denitch, *A Socialist View on Global Human Rights*, Newsletter of the Democratic Left, June 1977, at 1.

<sup>173</sup> Shea, *New Nuclear Policy Under the National Energy Plan*, 29 BAYLOR L. REV. 689, 703-09 (1977).

not be surprised by the vehemence with which our complaints about rights and liberties are rejected in many quarters because of this parochial attitude and obsolete language.

Thus, President Carter's policy, as announced in his numerous speeches and press conferences on the subject throughout his first year in office, clearly adopts the philosophy that it is not enough for America merely to assert her past values and her heritage, if she is in fact to preserve her values and her national interest now and in the future. Peace is indivisible, and peace requires universal recognition and progressive implementation of human rights, as understood in the tripartite sense of fundamental rights of the person, civil and political rights, and economic and social rights.

The implementation of this policy requires aggressive, forward presentation of the American position in all international fora; full funding of all valuable multilateral development programs; regular Congressional involvement in oversight of United States participation in international agencies, rather than on-again—off-again attitudes of hostility or apathy; and taking the initiative in the global revolution away from the totalitarian, Soviet-influenced states.<sup>174</sup> This requires that we make explicit our policy that democratic and libertarian policy entails support both for individual liberties and for the development necessary to make those liberties meaningful. In this context, the withdrawal from the ILO may have been a splash of cold-water in the face of a possibly drunk man, but a man nonetheless. We should rejoin the ILO in time for the 64th General Conference in Geneva in June 1978; we should hand the man a towel, and rejoin the struggle for the rights of man.

## APPENDIX I

### ILO BUDGET CUTS FOR THE 1978-79 BIENNIUM

The United States withdrawal eliminated 25% of the ILO budget. The ILO plans its budget on a biennial basis, so the first consequences of the withdrawal must appear in the 1978-79 budget.

Director-General Blanchard proposed on November 1, 1977, that previously adopted economies and efforts at streamlining be extended, and that a transitional budget containing a 19.2% reduction, be

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<sup>174</sup> See C. OSAKWE, *THE PARTICIPATION OF THE SOVIET UNION IN UNIVERSAL ORGANIZATIONS* (1972), reviewed by J. Hazard in 67 *AM. J. INT'L L.* 372 (1973).

adopted by the ILO Governing Body for 1978-79. (ILO Doc. GB 204/PFA/12/23). However, the last session of the Governing Body was concerned that the reduction was insufficient even with proposed economies, and made further reductions in the regular budget. (ILO Doc. GB 204/14/27). The consequences of further reductions include greater cut-backs in human rights programs, such as complete deletion of the legislative series of publications by the ILO. This publication dates back to the founding of the organizations and has provided great service to members over the years in studying and gaining from the experience of other members in labor legislation. In addition, the decisions of the Committee on Freedom of Association will no longer be published, preventing international access to this important body of jurisprudence. *Id.* at 22.

The following table summarizes the combined effect of the cuts made by the Director-General and those made by the Governing Body. It should be noted that the budget may suffer further reductions yet when the Director-General submits his report to the Governing Body at its 205th session, February-March 1978. Also the ILO Budget reflected here does not include the possible grants from the U.N. Development Program. These may indeed be increased in the future. Such grants may not be applied to the regular core program of the ILO, however, and in any event tend to further accentuate the emphasis on the ILO as a purely developmental agency, at the expense of the western view of development as appurtenant to the extension of freedom of association.

SUMMARY OF PROGRAMME ADJUSTMENTS BY MAJOR PROGRAMME

Budget Item	\$	\$	%
	1978-79 Allotment	Reduction	
A. Policy Making Organs			
Int'l Labour Conference	3,407,672	105,850	3.1
Governing Body	841,500	26,200	3.1
Major Regional Meetings	763,948	238,736	31.3
POLICY MAKING ORGANS	5,013,120	370,786	7.4

B. GENERAL MANAGEMENT	4,141,084	542,374	13.1
FURTHER REDUCTIONS		330,104	9.0
TOTAL REDUCTIONS		872,478	22.1

## C. Technical Programmes

Int'l Labour Standards and Human Rights	5,003,238	581,252	11.6
Further Reductions		665,254	13.3
Employment and Development	6,758,606	1,309,409	19.4
Further Reductions		226,210	3.3
Training	5,691,319	938,818	16.5
Further Reductions		144,305	2.5
Industrial Relations and Labour Administration	5,836,142	950,808	16.3
Further Reductions		84,584	1.4
Working Conditions & Environment	7,258,908	898,098	12.4
Further Reductions		321,828	4.4
Sectoral Activities	6,999,321	1,470,309	21.0
Further Reductions		53,966	0.8
Social Security	2,458,592	408,704	16.6
Economic & Social Status	813,222	420,778	51.7
Further Reductions		251,340	31.0
Statistics	2,420,084	359,480	14.9
Further Reductions		90,756	3.7
Co-ordination of Operational Activities	1,081,814	510,730	47.2
Further Reductions		571,084	52.8
Int'l Institute for Labour Studies	1,128,000	160,000	14.2
Int'l Social Security Assoc.	271,082	68,782	25.4

TECHNICAL PROGRAMMES	45,720,328	8,077,168	17.7
FURTHER REDUCTION TOTAL		2,409,327	5.2
TOTAL REDUCTIONS		10,486,495	22.9

## D. Services &amp; Support Activities

Personnel	5,956,250	1,448,628	24.3
Further Reductions		161,352	2.7
Financial & Central Admin. Serv.	20,426,428	5,364,494	26.3
Further Reductions		48,552	0.2
Editorial & Document Serv.	17,721,168	2,490,880	14.1
Further Reductions		414,720	2.3
Legal Serv.	823,870	—	—
Programme Budgeting & Mgmt.	2,010,038	402,096	20.0
Further Reductions		24,276	1.2
Information Systems	6,612,912	1,295,008	19.6
Further Reductions		107,104	1.6

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SERVICES & SUPPORT ACTIVITIES	53,550,666	11,001,106	20.5
FURTHER REDUCTION TOTAL		756,004	1.5
TOTAL REDUCTIONS		11,757,110	22.0

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## E. Regional Services &amp; Relations

Relations & Meetings	6,765,720	743,818	11.0
Further Reductions		38,000	0.6
Public Information	2,021,454	566,470	28.0
Liaison Office With the U.N.	851,964	137,100	16.1
Mgmt., Field Programmes, Africa	7,338,670	536,096	7.3
Further Reductions		150,888	2.1
Mgmt., Field Programmes, Americas	7,522,738	977,398	13.0
Further Reductions		150,888	2.0
Mgmt., Field Programmes, Asia	6,684,036	1,315,860	19.7
Further Reductions		150,888	2.2
Mgmt., Field Programmes, Middle East/Europe	4,646,638	1,339,052	28.8
Further Reductions		170,000	3.7

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REGIONAL SERVICES & RELATIONS	35,831,220	5,615,794	15.7
FURTHER REDUCTION TOTAL		660,664	1.8
TOTAL REDUCTIONS		6,276,458	17.5

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F. Other Expenses			
Other Budgetary Provisions	7,976,202	4,651,662	58.3
Operational Activities	11,337,500	2,200,000	19.4
Adjustment for Staff Turnover	(536,974)	—	—
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TOTAL OF ORDINARY BUDGET (Part I)	163,033,146	32,458,890	19.9
FURTHER REDUCTION TOTAL		4,156,099	2.5
TOTAL REDUCTIONS		36,614,989	22.4
PART I			
ORDINARY BUDGET	163,033,146	36,614,989	
PART II			
UNFORSEEN EXPENDITURE	275,000		
PART III			
WORKING CAPITAL FUND	5,765,854		
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TOTAL (Parts I, II, & III)	169,074,000	36,614,989	21.7

## APPENDIX II

International Labour Conference, 61st Session, 1976 Report VIII: Report of the Working Party on Structure International Labour Office, Geneva, 1976, at 69.

### AMENDED PROPOSAL CONCERNING RESOLUTIONS PROCEDURE SUBMITTED BY THE GOVERNMENT MEMBER OF THE UNITED STATES TO THE FIFTH MEETING OF THE WORKING PARTY ON STRUCTURE

Article 17, paragraph 1(2) and (3) of the Standing orders of the Conference should be amended as follows:

(2) Copies of all resolutions shall be available to delegates at the International Labour Office not more than 48 hours after the expiry of the limit laid down in the preceding subparagraph: provided that the Director-General shall provisionally, pending the consultation provided for in subparagraph (3) below, withhold circulations of the text of any resolution which either:

- (a) proposes the condemnation of a member State or States by name, or of the authorities or policies thereof, for allegedly pursuing policies or practices not specifically related to existing provisions of ILO Conventions or Recommendations, or

- (b) proposes the condemnation of a member State or States by name, or of the authorities or policies thereof, for alleged violations of ILO standards contained in ILO Conventions and Recommendations before the examination of those allegations under established ILO procedures has been initiated and completed and the allegations so examined have been sustained in the report thereof.

(3) When the circulation of any resolution has been provisionally withheld as required by subparagraph (2), the Director-General shall immediately prepare for the consideration of a panel of the Committee of Experts on the Application of Conventions and Recommendations consisting of the President of the Committee and two other members appointed by the Committee a report on: (a) the factual situation with respect to the relationship of the resolution provisionally withheld from circulation under subparagraph (2) (a) above, to existing international labour Conventions and Recommendations, or (b) the status of any examination under established ILO procedures of the alleged violations contained in the resolution in relation to the requirements of subparagraph 2(b) above. Unless such resolution is declared receivable by the unanimous decision of the panel, in which case it shall be available to delegates not later than the date fixed for the opening of the session of the Conference, the resolution shall neither be referred to a Resolutions Committee by the Conference nor moved at any sitting of the Conference.



